

ATTACHMENT 57

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Rust, Marcus - Vol. II

March 6, 2014

372

IN THE DISTRICT COURT OF WAYNDOTTE COUNTY,

KANSAS

TWENTY-NINTH JUDICIAL DISTRICT

ASSOCIATED WHOLESALE GROCERS,

INC., et al.,

Plaintiffs,

Case No.

V.

10CV2171

UNITED EGG PRODUCERS, et al.,

HIGHLY

Defendants.

CONFIDENTIAL

Volume II

Washington, D.C.

March 6, 2014

The deposition of MARCUS RUST

Was convened on Thursday, March 6, 2014,

Commencing at 9:08 a.m., at the offices of

Porter Wright, 1900 K Street, Northwest

Washington, D.C., before Paula G. Satkin,

Registered Professional Reporter and Notary

Public.

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HIGHLY CONFIDENTIAL

Rust, Marcus - Vol. II

March 6, 2014

2 (Pages 373 to 376)

<p style="text-align: right;">373</p> <p>1 APPEARANCES:</p> <p>2</p> <p>3 On behalf of the Plaintiffs:</p> <p>4 PATRICK J. STUEVE, ESQ.</p> <p>5 DAVID A. HICKEY, ESQ.</p> <p>6 Stueve Siegel Hanson LLP</p> <p>7 460 Nichols Road, Suite 200</p> <p>8 Kansas City, Missouri 64112</p> <p>9 (816) 714-7100</p> <p>10</p> <p>11 On behalf of Rose Acre Farms:</p> <p>12 JOHN C. MONICA, JR., ESQ.</p> <p>13 DONALD M. BARNES, ESQ.</p> <p>14 Porter, Wright, Morris & Arthur LLP</p> <p>15 1900 K Street, NW</p> <p>16 Suite 1110</p> <p>17 Washington, DC 20006</p> <p>18 (202) 778-3000</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p>	<p style="text-align: right;">375</p> <p>1 ALSO PRESENT:</p> <p>2 JOSEPH A. MILLER</p> <p>3 General Counsel, Rose Acre Farms, Inc.</p> <p>4</p> <p>5</p> <p>6</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p>
<p style="text-align: right;">374</p> <p>1 APPEARANCES (Cont'd)</p> <p>2</p> <p>3 On behalf of United Egg Producers and US</p> <p>4 Egg</p> <p>5 Marketers:</p> <p>6 JAN LEVINE, ESQ. (Via phone)</p> <p>7 WHITNEY REDDING, ESQ. (Via phone)</p> <p>8 Pepper Hamilton LLP</p> <p>9 3000 Two Logan Square</p> <p>10 Eighteenth and Arch Streets</p> <p>11 Philadelphia, Pennsylvania 19103-2799</p> <p>12 (215) 981-4000</p> <p>13</p> <p>14 On behalf of the Defendants Land O'Lakes,</p> <p>15 Moark and Norco Ranch:</p> <p>16 VANESSA JACOBSEN, ESQ. (Via phone)</p> <p>17 Eimer Stahl LLP</p> <p>18 224 South Michigan Avenue, Suite 1100</p> <p>19 Chicago, Illinois 60604</p> <p>20 (312) 660-7600</p> <p>21</p> <p>22</p>	<p style="text-align: right;">376</p> <p>1 EXAMINATION</p> <p>2 By Mr. Stueve 379</p> <p>3 By Mr. Barnes 667</p> <p>4 By Mr. Stueve 698</p> <p>5 By Mr. Barnes 734</p> <p>6 By Mr. Stueve 739</p> <p>7</p> <p>8 EXHIBITS</p> <p>9 Exhibit No. Page No.</p> <p>10 Exhibit 538 RA 0067638-639 399</p> <p>11 Exhibit 539 RA 0084872 406</p> <p>12 Exhibit 540 RAUPDATE 0082871 414</p> <p>13 Exhibit 541 RA 0068166-167 427</p> <p>14 Exhibit 542 MFC 0017617 438</p> <p>15 Exhibit 543 Moark 0019049 449</p> <p>16 Exhibit 544 RA 0067466-67 457</p> <p>17 Exhibit 545 RA 0071690-74 465</p> <p>18 Exhibit 546 RAUPDATE 0034892 492</p> <p>19 Exhibit 547 RAUPDATE 0035814-16 494</p> <p>20 Exhibit 548 RAUPDATE 0034691 503</p> <p>21 Exhibit 549 RAUPDATE 0039139 505</p> <p>22 Exhibit 550 Flash Drive 514</p>

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HIGHLY CONFIDENTIAL

Rust, Marcus - Vol. II

March 6, 2014

3 (Pages 377 to 380)

<p style="text-align: right;">377</p> <p>1 Exhibit 551 Document 517</p> <p>2 Exhibit 552 Article 519</p> <p>3 Exhibit 553 E-mail 524</p> <p>4 Exhibit 554 RAFK 000174-75 526</p> <p>5 Exhibit 555 RAFKS 0007213 529</p> <p>6 Exhibit 556 RAFKS 0009116-919 531</p> <p>7 Exhibit 557 FDA Warning Letter 543</p> <p>8 Exhibit 558 RAUPDATE 0039242 545</p> <p>9 Exhibit 559 UE PRIV 0000069-70 552</p> <p>10 Exhibit 560 UE PRIV 0000071-72 557</p> <p>11 Exhibit 561 NL 01200644-46L 570</p> <p>12 Exhibit 562 RAUPDATE 0080669 573</p> <p>13 Exhibit 563 UE 020105-07 582</p> <p>14 Exhibit 564 RAUPDATE 586</p> <p>15 Exhibit 565 RAUPDATE 0038374-77 595</p> <p>16 Exhibit 566 UE 0707359-365 598</p> <p>17 Exhibit 567 RAUPDATE 80438-40 613</p> <p>18 Exhibit 568 RA 004766-70 620</p> <p>19 Exhibit 569 FMI 000284-85 626</p> <p>20 Exhibit 570 UE 0295185 629</p> <p>21 Exhibit 571 Document 693</p> <p>22 Exhibit 572 Document 741</p>	<p style="text-align: right;">379</p> <p>1 MARCUS RUST</p> <p>2 a witness, called for examination, having been</p> <p>3 previously duly sworn, was examined and</p> <p>4 testified as follows:</p> <p>5 EXAMINATION BY COUNSEL FOR PLAINTIFFS</p> <p>6 BY MR. STUEVE:</p> <p>7 Q. Good morning, Mr. Rust.</p> <p>8 A. Good mornings.</p> <p>9 Q. You understand your testimony is</p> <p>10 still under oath?</p> <p>11 A. Yes.</p> <p>12 Q. All right. We ended yesterday</p> <p>13 talking about the UEP, United Egg Producers.</p> <p>14 You understand when I'm using UEP I'm referring</p> <p>15 to United Egg Producers?</p> <p>16 A. Yes.</p> <p>17 Q. And their certified program. And</p> <p>18 I believe we established in February 2002 Rose</p> <p>19 Acre joined UEP and signed up for the certified</p> <p>20 program; is that correct?</p> <p>21 A. At the request of our customers.</p> <p>22 Yes.</p>
<p style="text-align: right;">378</p> <p>1 PROCEEDINGS</p> <p>2 THE VIDEOGRAPHER: Here begins</p> <p>3 videotape number one, volume II, in the</p> <p>4 videotaped deposition of Marcus Rust. Today's</p> <p>5 date is March 6, 2014 and the time is</p> <p>6 approximately 9:08 a.m.</p> <p>7 Will attorneys please state their</p> <p>8 presence for the record.</p> <p>9 MR. STUEVE: Yes. I believe the</p> <p>10 folks that are on the phone have already made</p> <p>11 their appearance on the record. This is Patrick</p> <p>12 Stueve, Stueve Siegel Hanson, here on behalf of</p> <p>13 the Plaintiffs, along with me is my associate</p> <p>14 David Hickey.</p> <p>15 MR. BARNES: Donald Barnes, Porter</p> <p>16 Wright Morris & Arthur. We are counsel for Rose</p> <p>17 Acre Farms.</p> <p>18 MR. MONICA: John Monica with</p> <p>19 Mr. Barnes, who's my partner at Porter Wright.</p> <p>20 MR. MILLER: Joe Miller, general</p> <p>21 counsel Rose Acre Farms.</p> <p>22 Whereupon --</p>	<p style="text-align: right;">380</p> <p>1 Q. If you could, if you would just</p> <p>2 answer my question. We'll get into why you did</p> <p>3 it, but if you could, if you could confirm in</p> <p>4 February 2002 that's when Rose Acre joined UEP</p> <p>5 and also signed up for the UEP certified</p> <p>6 program; is that correct?</p> <p>7 MR. BARNES: I'm going to object</p> <p>8 to that, Pat. That's not what he testified to.</p> <p>9 I believe he testified he signed up for the</p> <p>10 animal welfare program after he joined. It was</p> <p>11 not a simultaneous action.</p> <p>12 MR. STUEVE: I think what he said,</p> <p>13 there was a period of time they qualified for</p> <p>14 it, but as far as -- if you could, just let him</p> <p>15 answer it.</p> <p>16 BY MR. STUEVE:</p> <p>17 Q. It's my understanding that in</p> <p>18 February of 2002 Rose Acre signed up for United</p> <p>19 Egg Producers and actually executed an</p> <p>20 agreement; is that correct?</p> <p>21 A. We executed an agreement that you</p> <p>22 showed me a copy of here in February.</p>

HIGHLY CONFIDENTIAL

Rust, Marcus - Vol. II

March 6, 2014

4 (Pages 381 to 384)

<p style="text-align: right;">381</p> <p>1 Q. 2002?</p> <p>2 A. Yes.</p> <p>3 Q. And that was with United Egg</p> <p>4 Producers; correct, sir?</p> <p>5 A. Correct. Capper-Volstead co-op</p> <p>6 group.</p> <p>7 Q. And was that your understanding at</p> <p>8 the time you signed up, sir?</p> <p>9 A. Yes.</p> <p>10 Q. And what was the basis of that</p> <p>11 understanding?</p> <p>12 A. Just a lot of the stuff they</p> <p>13 explained about the Capper-Volstead co-op, what</p> <p>14 they could do and couldn't do.</p> <p>15 Q. At the time you signed up?</p> <p>16 A. Yes.</p> <p>17 Q. Who was that it communicated that</p> <p>18 to you?</p> <p>19 A. I think it was from memory the</p> <p>20 Gregory's.</p> <p>21 Q. Okay. And did they give you any</p> <p>22 documents at that time?</p>	<p style="text-align: right;">383</p> <p>1 Q. What were you skeptical about</p> <p>2 then?</p> <p>3 A. Some of the things we heard.</p> <p>4 Q. About what?</p> <p>5 A. How do you mean?</p> <p>6 Q. Some of the things you heard about</p> <p>7 what?</p> <p>8 A. About how -- what they did as far</p> <p>9 as the recommendations or their so-called supply</p> <p>10 management thing.</p> <p>11 Q. Okay. You had heard rumors about</p> <p>12 that?</p> <p>13 A. Yes.</p> <p>14 Q. All right. And this was prior to</p> <p>15 joining?</p> <p>16 A. They've done that for 20 years.</p> <p>17 Q. Okay. And did you -- do you</p> <p>18 recall though anything specifically that they</p> <p>19 gave you at the time you joined in 2002</p> <p>20 concerning Capper-Volstead and whether or not it</p> <p>21 applied to UEP?</p> <p>22 A. Repeat your question again.</p>
<p style="text-align: right;">382</p> <p>1 A. They could have.</p> <p>2 Q. Do you remember anything</p> <p>3 specifically?</p> <p>4 A. Just -- they had -- through the</p> <p>5 years they give us lots of paperwork saying this</p> <p>6 is what they do and all the stuff they've</p> <p>7 accomplished all that type of thing.</p> <p>8 Q. But specifically concerning</p> <p>9 Capper-Volstead Act and whether or not the</p> <p>10 Capper-Volstead Act, in fact, applied to UEP,</p> <p>11 did they give you any specific documents?</p> <p>12 A. They gave us some at different</p> <p>13 times.</p> <p>14 Q. Prior to joining?</p> <p>15 A. Yes. Explaining what it was. We</p> <p>16 had our suspicions -- we was apprehensive of the</p> <p>17 group.</p> <p>18 Q. And also apprehensive about</p> <p>19 whether or not they were truly a Capper-Volstead</p> <p>20 co-op?</p> <p>21 A. We had no doubt to believe they</p> <p>22 weren't a Capper-Volstead co-op.</p>	<p style="text-align: right;">384</p> <p>1 MR. STUEVE: If you could read</p> <p>2 back my question.</p> <p>3 (The record was read as</p> <p>4 requested.)</p> <p>5 THE WITNESS: Don't club me.</p> <p>6 (The record was read as</p> <p>7 requested.)</p> <p>8 THE WITNESS: Yes. I remember</p> <p>9 some things. I don't remember exactly what they</p> <p>10 were. They had documents that they passed out,</p> <p>11 brochure type stuff.</p> <p>12 BY MR. STUEVE:</p> <p>13 Q. Do you remember specifically what</p> <p>14 was in there about the Capper-Volstead Act?</p> <p>15 A. Just that they were for farmer</p> <p>16 producers and that, you know, before we could</p> <p>17 join we would have to be qualified.</p> <p>18 Q. And how would you qualify?</p> <p>19 A. We had to -- they had to verify</p> <p>20 that we was a farmer producer.</p> <p>21 Q. How would they do that?</p> <p>22 A. I don't recall exactly, but we had</p>

HIGHLY CONFIDENTIAL

Rust, Marcus - Vol. II

March 6, 2014

5 (Pages 385 to 388)

<p style="text-align: right;">385</p> <p>1 to certify that we had so many chickens and we 2 owned the chickens and that type of thing. 3 Q. Do you remember them seeking 4 verification that you owned at least 50 percent 5 of the chickens that you -- 6 A. We owned 100 percent. 7 Q. Right, but do you remember that 8 50 percent rule? 9 A. I remember it from someplace. I 10 don't know if it was then or later or when. 11 Q. What was your understanding about 12 the 50 percent requirement? 13 A. My understanding the 50 percent 14 requirement was like in a year's time 50 percent 15 of the eggs that you sold had to be eggs that 16 you produced or something to that effect. 17 Q. Right. And they, in fact, asked 18 you to verify that; did they not, UEP? 19 A. I don't recollect that. 20 Q. All right. You don't remember 21 ever being asked that? 22 A. They could have.</p>	<p style="text-align: right;">387</p> <p>1 MS. REDDING: Object to form. 2 THE WITNESS: I had no reason to 3 believe any members were not farmer producers 4 were like we were. If they signed the same 5 paper we did they had to be a farmer member or 6 they lied. 7 BY MR. STUEVE: 8 Q. Right. But if, in fact, someone 9 had lied and there was a member that was not a 10 farmer producer, you understood that that could 11 jeopardize the Capper-Volstead exemption that 12 may apply to UEP; is that fair enough? 13 A. I can't say I understood that. I 14 don't recollect that. 15 Q. Now, it's also my understanding 16 that when you joined in February of 2002 that 17 you had communicated at that time to UEP Rose 18 Acre's intention to be UEP certified; fair 19 enough? 20 A. I don't know what you mean by fair 21 enough. 22 MR. STUEVE: If you could read</p>
<p style="text-align: right;">386</p> <p>1 Q. Okay. Do you remember when they 2 asked you to verify that? 3 MR. BARNES: Object to the form. 4 THE WITNESS: I don't remember the 5 exact dates. They had different things that you 6 had to sign papers and stuff for. 7 BY MR. STUEVE: 8 Q. All right. But you had an 9 understanding that in order for the UEP industry 10 association to have Capper-Volstead application 11 that the members had to be farmer producers; is 12 that correct? 13 A. Yes. 14 Q. All right. And you understood 15 that if there were members that were not farmer 16 producers that that could jeopardize the 17 Capper-Volstead exemption that would apply to 18 UEP; correct? 19 A. Repeat your we question again. 20 MR. STUEVE: Read it back. 21 (The record was read as 22 requested.)</p>	<p style="text-align: right;">388</p> <p>1 back my question, if you could just answer it 2 for me, sir. 3 (The record was read as 4 requested.) 5 THE WITNESS: At the request of 6 our customers who were demanding we be in the 7 program, we did join the certified program. 8 BY MR. STUEVE: 9 Q. Sir, my question is, I'm just 10 trying to confirm the timing. That when you 11 joined -- 12 A. February of 2002. 13 Q. In February 2002 when you joined 14 UEP you also communicated to UEP's management 15 Rose Acre's intention to join the UEP certified 16 program; is that correct? 17 A. Yes. 18 Q. All right. Now -- 19 A. The only reason we joined. 20 Q. Are you aware of any documents 21 you've testified that your customers, prior to 22 March of 2002, were demanding that you join the</p>

HIGHLY CONFIDENTIAL

Rust, Marcus - Vol. II

March 6, 2014

6 (Pages 389 to 392)

<p style="text-align: right;">389</p> <p>1 UEP certified program; is that correct?</p> <p>2 A. Our customers had specifications</p> <p>3 and in the specifications for you to be a</p> <p>4 qualified supplier for them you had to be into</p> <p>5 this certified program.</p> <p>6 Q. And I want to know, do you have</p> <p>7 any documents that would confirm that in March</p> <p>8 of 2002 you had customers that in their</p> <p>9 specifications were requiring your membership in</p> <p>10 the certified program?</p> <p>11 A. We may have. We may not. It may</p> <p>12 have been a verbal telling to us by the</p> <p>13 customer.</p> <p>14 Q. In preparation for your deposition</p> <p>15 today do you recall reviewing any documents that</p> <p>16 verified that your customers in March of 2002 or</p> <p>17 prior to that time were specifying that Rose</p> <p>18 Acre be UEP certified?</p> <p>19 A. I believe there was some,</p> <p>20 someplace.</p> <p>21 Q. And, sir, what document did you</p> <p>22 review in preparation of your deposition?</p>	<p style="text-align: right;">391</p> <p>1 A. I don't recollect any.</p> <p>2 Q. Let me finish my question then you</p> <p>3 can answer.</p> <p>4 In preparation of your deposition</p> <p>5 today do you recall reviewing any documents that</p> <p>6 indicated that your customers were requiring</p> <p>7 that Rose Acre's eggs be UEP certified in March</p> <p>8 of 2002 or prior to that time?</p> <p>9 MR. BARNES: Objection. Asked and</p> <p>10 answered.</p> <p>11 BY MR. STUEVE:</p> <p>12 Q. Go ahead and answer it now.</p> <p>13 A. I don't recollect.</p> <p>14 Q. Okay. Let me show you what's been</p> <p>15 previously marked 237.</p> <p>16 This is another United Voices that</p> <p>17 would have been sent out by UEP in March of</p> <p>18 2002; correct, sir?</p> <p>19 A. That's what it states.</p> <p>20 Q. And this would have been after</p> <p>21 you, Rose Acre had joined?</p> <p>22 A. Yes.</p>
<p style="text-align: right;">390</p> <p>1 A. I did not review any document to</p> <p>2 that today.</p> <p>3 Q. So in preparation for your</p> <p>4 deposition you did not review any documents that</p> <p>5 you recall that would show that your customers</p> <p>6 were requiring as a specification that your eggs</p> <p>7 be UEP certified in March of 2002; correct?</p> <p>8 A. I believe I saw an FMI thing that</p> <p>9 requested it.</p> <p>10 Q. But FMI is not one of your</p> <p>11 customers; correct?</p> <p>12 A. They were a cooperative or</p> <p>13 something, a trade association of our customers</p> <p>14 who the customers had got together with and they</p> <p>15 had this Board establish this program, this</p> <p>16 certified program with UEP, which they asked us</p> <p>17 to join.</p> <p>18 Q. My question is very specific. It</p> <p>19 has to do with your customers. Do you recall in</p> <p>20 preparation for your deposition today reviewing</p> <p>21 any documents that indicate that your customers</p> <p>22 were requiring in March of 2002 --</p>	<p style="text-align: right;">392</p> <p>1 MR. BARNES: Pat, we've had a</p> <p>2 request from people on the phone to read in</p> <p>3 the --</p> <p>4 MR. STUEVE: I'm doing that for</p> <p>5 any new documents -- so they know, this is</p> <p>6 Exhibit 237. So if you could, if you could turn</p> <p>7 to Bates range, the last three digits are 818,</p> <p>8 Mr. Rust. And actually, turn to the previous</p> <p>9 page, if you would, and I'll just direct your</p> <p>10 attention to the name of the topic here.</p> <p>11 Mr. Rust, if you could turn first</p> <p>12 to 817. Do you see the title there, You Should</p> <p>13 Implement Guidelines? Do you see that?</p> <p>14 THE WITNESS: Uh-huh.</p> <p>15 BY MR. STUEVE:</p> <p>16 Q. By Gene Gregory; is that right?</p> <p>17 A. Yes.</p> <p>18 Q. And under that title over on the</p> <p>19 next page, 518, under, you should implement the</p> <p>20 guidelines, the fourth paragraph down it states,</p> <p>21 "that if all the industry were to follow the</p> <p>22 guidelines." Do you see that?</p>

HIGHLY CONFIDENTIAL

Rust, Marcus - Vol. II

March 6, 2014

7 (Pages 393 to 396)

<p style="text-align: right;">393</p> <p>1 A. Yes.</p> <p>2 Q. All right. It states, "if all the</p> <p>3 industry were to follow the guidelines through</p> <p>4 the first step, this would resulted in a flock</p> <p>5 size reduction of 13 million hens. Place your</p> <p>6 own estimate on how much the egg market will</p> <p>7 rise even if half this reduction were to occur.</p> <p>8 So the pay back for making this first step to</p> <p>9 house average of 56 square inches is</p> <p>10 tremendous." Do you see that?</p> <p>11 A. Yes.</p> <p>12 Q. That's -- that economic purpose,</p> <p>13 which is of cage space reductions, which is to</p> <p>14 reduce supply and increase prices was the exact</p> <p>15 concern that your family members had before you</p> <p>16 joined; right?</p> <p>17 A. No.</p> <p>18 Q. And, in fact, it's the exact</p> <p>19 concern that your brother had in 2008; correct?</p> <p>20 A. Repeat your question. You lost --</p> <p>21 make it a shorter question.</p> <p>22 Q. The fact that the guidelines were</p>	<p style="text-align: right;">395</p> <p>1 management program.</p> <p>2 Q. And in fact, though, what's being</p> <p>3 identified here by Gene Gregory, the president</p> <p>4 of UEP, is that, in fact, its underlying purpose</p> <p>5 was to restrict the supply and boost prices for</p> <p>6 eggs; correct, sir?</p> <p>7 MS. LEVINE: Objection. Jan</p> <p>8 Levine.</p> <p>9 THE WITNESS: I don't agree with</p> <p>10 that.</p> <p>11 BY MR. STUEVE:</p> <p>12 Q. Certainly what he's outlining is</p> <p>13 that the pay back for making this first step to</p> <p>14 house average of 56 square inches is tremendous.</p> <p>15 The pay back is by reducing the flock size of</p> <p>16 13 million you reduce the supply of eggs and</p> <p>17 boost prices for all egg producers. That's the</p> <p>18 pay back; right?</p> <p>19 MR. BARNES: Object to the form.</p> <p>20 THE WITNESS: Repeat your question</p> <p>21 again.</p> <p>22 MR. STUEVE: Read it back.</p>
<p style="text-align: right;">394</p> <p>1 being used to reduce egg supply and boost prices</p> <p>2 under the agenda of animal welfare was the</p> <p>3 concern that your brother had in 2008; correct?</p> <p>4 A. His concern was the prior to</p> <p>5 animal welfare program.</p> <p>6 Q. And in fact, Mr. Rust, you were</p> <p>7 concerned that this, in fact, was the underlying</p> <p>8 purpose of the certified program even before you</p> <p>9 joined it; right?</p> <p>10 A. We had suspicions of that.</p> <p>11 Q. Okay. And, in fact, those -- the</p> <p>12 suspicions that you had are confirmed in this --</p> <p>13 in these communications in United Voices in</p> <p>14 March of 2002; correct, sir?</p> <p>15 A. Repeat your question.</p> <p>16 Q. The concerns you had about the</p> <p>17 underlying purpose of the animal welfare program</p> <p>18 to be a supply management program is confirmed</p> <p>19 in the communication that we just read; correct,</p> <p>20 sir?</p> <p>21 A. We wanted to make sure it stayed</p> <p>22 an animal welfare program and not a supply</p>	<p style="text-align: right;">396</p> <p>1 (The record was read as</p> <p>2 requested.)</p> <p>3 THE WITNESS: I do not agree with</p> <p>4 your characterization of the statement you're</p> <p>5 making.</p> <p>6 BY MR. STUEVE:</p> <p>7 Q. Sir, if you would, can you confirm</p> <p>8 for me that the pay back that he's referring to</p> <p>9 in the United Voices document that we're looking</p> <p>10 at is by reducing the flock size by 13 million,</p> <p>11 that that will reduce the supply of eggs and</p> <p>12 boost prices; correct, sir?</p> <p>13 A. I will agree that's what that</p> <p>14 document says.</p> <p>15 Q. That's all I wanted you to answer.</p> <p>16 A. I have no problem with that. I do</p> <p>17 not agree with your characterization of it.</p> <p>18 Q. You agree that that's what the</p> <p>19 document says; right?</p> <p>20 A. Yes.</p> <p>21 Q. And that the pay back he's</p> <p>22 referring to here is by reducing the flock size</p>

HIGHLY CONFIDENTIAL

Rust, Marcus - Vol. II

March 6, 2014

8 (Pages 397 to 400)

<p style="text-align: right;">397</p> <p>1 by 13 million that that will reduce the supply 2 of eggs and boost prices, that's the pay back 3 that he's identifying? 4 A. I don't agree with that. 5 MR. BARNES: Objection. 6 BY MR. STUEVE: 7 Q. I know you don't agree with that, 8 but that's the pay back he's identifying? 9 MR. BARNES: Objection. Calls for 10 speculation as to what Mr. Gregory meant when he 11 wrote this. If the witness wants to answer he 12 can go ahead and answer. 13 THE WITNESS: I don't agree. 14 BY MR. STUEVE: 15 Q. I understand you don't agree wit 16 it, but you understood that was the pay back he 17 was outlining; correct? 18 MR. BARNES: Same objection. 19 THE WITNESS: I never read that 20 document until today or until one of these 21 preparations. 22 BY MR. STUEVE:</p>	<p style="text-align: right;">399</p> <p>1 Mark it first. 2 Show you what's been marked 538, 3 RA 0067638 through 639. 4 (Rust Exhibit Number 538 was 5 marked for identification.) 6 BY MR. STUEVE: 7 Q. This is -- these are notes from 8 your mother; right? 9 A. Yes. 10 Q. She would have been the president 11 of Rose Acre at this time; right? 12 A. Correct. 13 Q. She's writing KY Hendrix; right, 14 your brother-in-law? 15 A. Correct. 16 Q. And what was his position at that 17 time at the company? 18 A. He was assistant flock manager. 19 Q. And he's the one that when you 20 joined UEP joined the committee responsible for 21 the animal welfare guidelines; correct, sir? 22 A. Yes.</p>
<p style="text-align: right;">398</p> <p>1 Q. You remember reading it in your 2 preparation? 3 A. Yes. 4 Q. All right. And what I'm asking 5 you, I understand you don't agree with what he's 6 saying in here, but what Mr. Gregory was 7 outlining as far as the pay back was the 8 reduction in egg supply that would reduce egg 9 prices; correct? 10 MR. BARNES: Same objection. 11 THE WITNESS: I don't agree with 12 him. 13 BY MR. STUEVE: 14 Q. You don't agree with him? 15 A. No. That's what he says here. 16 THE REPORTER: Sir, can I please 17 ask you to try to wait until he finishes. 18 THE WITNESS: That's what he says, 19 too. 20 MR. BARNES: He doesn't listen to 21 me. 22 MR. STUEVE: Let me show you --</p>	<p style="text-align: right;">400</p> <p>1 Q. It says, "Ky, talked to Marcus," 2 that would be you; right? 3 A. Correct. 4 Q. "Talked to Marcus last night about 5 UEP guidelines." Do you see that? 6 A. Yes. 7 Q. "They are good, but we are 8 concerned with the what looks like the 9 underlying purpose," and she under scores that, 10 right, of the whole thing; right? 11 A. Correct. That had been our 12 suspensions the whole time. 13 Q. The concern about the underlying 14 purpose was it was a supply management tool; 15 right? 16 A. We was afraid of that. Yes. 17 Q. And that's in March 2002; right? 18 A. Correct. 19 Q. And despite those concerns you, in 20 fact, joined the UEP certified program; correct, 21 sir? 22 A. That's the reason we joined. We</p>

HIGHLY CONFIDENTIAL

Rust, Marcus - Vol. II

March 6, 2014

9 (Pages 401 to 404)

<p style="text-align: right;">401</p> <p>1 looked at doing either volunteer -- the program</p> <p>2 or the UEP. We decided we wanted to be involved</p> <p>3 into it to make sure that it stayed to the</p> <p>4 program and never become a supply management</p> <p>5 program.</p> <p>6 Q. The -- this note here is</p> <p>7 March 27th of 2002. That would have been</p> <p>8 shortly after you joined UEP; right?</p> <p>9 A. Correct.</p> <p>10 Q. And you can confirm your mother</p> <p>11 accurately depicted your concern and her concern</p> <p>12 about the underlying purpose being a supply</p> <p>13 management program; correct?</p> <p>14 MR. BARNES: Object to the form.</p> <p>15 That's not what the document says.</p> <p>16 THE WITNESS: Repeat your</p> <p>17 question.</p> <p>18 BY MR. STUEVE:</p> <p>19 Q. I just want to make sure that she</p> <p>20 mentions discussing with you that this note in</p> <p>21 March 27th of '02 when she says "we" she's</p> <p>22 referring to you and her when she's referring to</p>	<p style="text-align: right;">403</p> <p>1 page -- by the way, this is United Voices that</p> <p>2 was produced by Rose Acre as indicated by the</p> <p>3 lower Bates range; right?</p> <p>4 A. Repeat your question.</p> <p>5 Q. RA you understands for Rose Acre</p> <p>6 that's in the lower right-hand corner?</p> <p>7 A. So this was our document?</p> <p>8 Q. Yes. It was produced by you.</p> <p>9 A. Okay.</p> <p>10 Q. If you would, the bottom, the last</p> <p>11 paragraph there on the very first page. It</p> <p>12 says, "the hatch reduction to meet the space</p> <p>13 allowance guidelines of the animal care</p> <p>14 certified program are beginning to show egg</p> <p>15 market value improvements. This trend should</p> <p>16 continue." Do you see that?</p> <p>17 A. Yes.</p> <p>18 Q. And what's being communicated</p> <p>19 there with respect to the egg market value</p> <p>20 improvements is because of the hatch reduction</p> <p>21 that is now leading to a reduction in the supply</p> <p>22 of eggs, which is resulting in the boosting of</p>
<p style="text-align: right;">402</p> <p>1 our concern about the underlying purpose, which</p> <p>2 you've indicated the concern was it was a supply</p> <p>3 management program; correct?</p> <p>4 MR. BARNES: Objection.</p> <p>5 THE WITNESS: Repeat your question</p> <p>6 again.</p> <p>7 BY MR. STUEVE:</p> <p>8 Q. You've already testified that the</p> <p>9 underlying purpose concern was a concern that it</p> <p>10 was a supply management program; correct?</p> <p>11 A. Correct.</p> <p>12 Q. I just want to confirm that this</p> <p>13 note reflects that that was the concern both of</p> <p>14 your mother and you at that time; fair enough?</p> <p>15 A. Yes.</p> <p>16 Q. All right. Now, if you could --</p> <p>17 show you what's been marked as Exhibit 110.</p> <p>18 This is another United Voices</p> <p>19 publication if you look down at the bottom left</p> <p>20 hand corner, it's dated June 4, 2003; right?</p> <p>21 A. Yes.</p> <p>22 Q. And if you would, on that first</p>	<p style="text-align: right;">404</p> <p>1 egg prices; correct, sir?</p> <p>2 MR. BARNES: Object to form.</p> <p>3 THE WITNESS: Repeat your</p> <p>4 question.</p> <p>5 MR. STUEVE: I'll have her read it</p> <p>6 back.</p> <p>7 (The record was read as</p> <p>8 requested.)</p> <p>9 MR. BARNES: Same objection.</p> <p>10 THE WITNESS: That's what it says</p> <p>11 here. I don't agree with that at all.</p> <p>12 BY MR. STUEVE:</p> <p>13 Q. Now, if you would, on page 4 of</p> <p>14 that document it's -- of the June 4th, 2003. It</p> <p>15 has, "these market improvements can be</p> <p>16 attributed to." Do you see that?</p> <p>17 A. Which line are we at?</p> <p>18 Q. Under May's prices, best in many</p> <p>19 years?</p> <p>20 A. Okay.</p> <p>21 Q. It says, "these market</p> <p>22 improvements can be attributed to." Do you see</p>

HIGHLY CONFIDENTIAL

Rust, Marcus - Vol. II

March 6, 2014

10 (Pages 405 to 408)

<p style="text-align: right;">405</p> <p>1 that at the bottom there?</p> <p>2 A. Yes. I see what it says.</p> <p>3 Q. And the first item there</p> <p>4 identifies, "reduced pullet hatch finally making</p> <p>5 an impact upon supplies." That's referring to</p> <p>6 the UEP certified guidelines; correct, sir?</p> <p>7 A. I assume that's what it is.</p> <p>8 Q. And then the third one there,</p> <p>9 animal care certified program beginning to work</p> <p>10 like many had projected. Do you see that?</p> <p>11 A. I see what it says there. Yes.</p> <p>12 Q. That's again referring to the</p> <p>13 reduction in the supply of eggs; correct, sir?</p> <p>14 A. I don't agree with that, but</p> <p>15 that's what it says.</p> <p>16 Q. And then the second item there</p> <p>17 concerning the best prices in many years is,</p> <p>18 "USEM exports reducing supplies at critical</p> <p>19 times." Do you see that?</p> <p>20 A. Yes.</p> <p>21 Q. That would have been exports</p> <p>22 coordinated by USEM members to reduce the supply</p>	<p style="text-align: right;">407</p> <p>1 A. Yes.</p> <p>2 Q. And Rose Acre would have been a</p> <p>3 member of --</p> <p>4 A. Trying to read it here.</p> <p>5 Q. Okay.</p> <p>6 A. Okay. I don't think I saw this</p> <p>7 document.</p> <p>8 Q. She states in the second</p> <p>9 paragraph, "and KY would have been in charge of</p> <p>10 the flocks"?</p> <p>11 A. Ky.</p> <p>12 Q. Ky. Excuse me. Ky would have</p> <p>13 been in charge of the flocks at that time?</p> <p>14 A. He was assistant flock manager.</p> <p>15 Q. Who was the --</p> <p>16 A. My brother Anthony. Ky worked for</p> <p>17 Anthony. He worked with the Donovan birds on</p> <p>18 this farm.</p> <p>19 Q. The Donovan production facility?</p> <p>20 A. Yeah.</p> <p>21 Q. All right. And this is</p> <p>22 specifically concerning that, though; right?</p>
<p style="text-align: right;">406</p> <p>1 of eggs during critical times to boost prices;</p> <p>2 correct, sir?</p> <p>3 MR. BARNES: Object to the form.</p> <p>4 THE WITNESS: That's what it says.</p> <p>5 I don't agree with it.</p> <p>6 (Rust Exhibit Number 539 was</p> <p>7 marked for identification.)</p> <p>8 BY MR. STUEVE:</p> <p>9 Q. Show you what's been marked</p> <p>10 Exhibit 539, this is Bates range RA 0084872.</p> <p>11 One page.</p> <p>12 Did you review Exhibit 539 in</p> <p>13 preparation for your deposition?</p> <p>14 A. I don't recall.</p> <p>15 Q. This is your mother's handwriting,</p> <p>16 is it not, sir?</p> <p>17 A. Yes. It is.</p> <p>18 Q. And it's up at the top it's KY; is</p> <p>19 that right?</p> <p>20 A. Yes.</p> <p>21 Q. It's dated December 30th, '02; is</p> <p>22 that right?</p>	<p style="text-align: right;">408</p> <p>1 A. Right.</p> <p>2 Q. Approximately how many birds did</p> <p>3 you have there at that time?</p> <p>4 A. Maybe 120 -- 30,000, something</p> <p>5 like that.</p> <p>6 Q. It says, "I'm very, very concerned</p> <p>7 about neck and breast molt that is showing up on</p> <p>8 birds." Do you see that?</p> <p>9 A. Yes.</p> <p>10 Q. What is she referring to?</p> <p>11 A. If the -- these were brown birds.</p> <p>12 Most of the birds we had always been raising had</p> <p>13 been white birds and when you have a brown -- we</p> <p>14 weren't sure if we were feeding them 100 percent</p> <p>15 right, but what was happening is the feather</p> <p>16 would come off around their neck. It could be a</p> <p>17 mechanical issue, maybe we had the feed troughs</p> <p>18 not set high enough or too high and they rub</p> <p>19 them off. It could have been improper</p> <p>20 nutrition. We weren't sure at the time. It may</p> <p>21 have been the breed of the bird. You get</p> <p>22 different breeds of birds and, you know, our</p>

HIGHLY CONFIDENTIAL

Rust, Marcus - Vol. II

March 6, 2014

11 (Pages 409 to 412)

<p style="text-align: right;">409</p> <p>1 white birds typically if they went in neck molt 2 you wouldn't see that kind of loss in egg 3 production. 4 Q. And then down below she says, 5 "feed being run -- is feed being run deep enough 6 at ends of houses. The birds are just plain 7 having to reach too far to get food." Did I 8 read that correct? 9 A. Yes. 10 Q. "Either the food depth is too low 11 or the feeders are too low." Do you see that? 12 A. Yes. 13 Q. "So birds were even bleeding on 14 the breast at Donovan. This is no way to take 15 care of chickens. We cannot allow this 16 condition to continue." Do you see that? 17 A. Yes. 18 Q. Now, why was it that your mother 19 would have become aware of the fact that birds 20 were even bleeding on the breast at Donovan? 21 How would she even become aware of that? 22 A. She may have went through. She</p>	<p style="text-align: right;">411</p> <p>1 birds that are cage free; is she, in paragraph 2 number one? 3 A. Donovan was cage free. 4 Q. So you're saying that the birds 5 she's referring to when she's says they're 6 having to reach too far to get food were not in 7 a cage? 8 A. Correct. 9 Q. Well, why would they have to reach 10 too far to get to their food? 11 A. I didn't see what she saw. Maybe 12 they had the feeder set too high. I'm not sure. 13 The chickens are running loose and you've got 14 the trough hanging from the ceiling and there's 15 pans, the pan feeder there. That was set too 16 high. The chickens when they would reach up to 17 peck into it they could rub their necks on the 18 thing if it was set too high. That's the only 19 thing I can figure. 20 Q. Now, I thought Rose Acre had a 21 zero tolerance on animal care? 22 A. That's why she wrote it up, sent</p>
<p style="text-align: right;">410</p> <p>1 would go to the farms on occasions. She might 2 have walked through because she said at the 3 bottom it says, "P.S. breast looked okay." So I 4 would assume, you know, she made a farm visit 5 and this was her report back to Ky from what she 6 saw. 7 Q. It was only when he actually went 8 and physically inspected Donovan that she, in 9 fact, saw what was occurring there; is that 10 correct, sir? 11 A. I have no firsthand knowledge. I 12 just know what this says. 13 Q. Now, did you pass the animal care 14 certified audit in December of 2002? 15 A. This farm was not part of the 16 audit. 17 Q. Why not? 18 A. It's cage free. Cage free farms 19 were not part -- they were automatically 20 qualified because they was cage free at that 21 time. 22 Q. Well, sir, she's not referring to</p>	<p style="text-align: right;">412</p> <p>1 him the note. 2 Q. Well, but if it wasn't for your 3 mom actually going and checking out the facility 4 this would have continued to happen; correct, 5 sir? 6 MR. BARNES: Object to the form. 7 Calls for speculation. 8 THE WITNESS: My mother if she saw 9 two birds and there was blood on two of them she 10 would be concerned with all birds. 11 BY MR. STUEVE: 12 Q. It was not her responsibility. It 13 was KY and your brother Anthony's responsibility 14 for care of the birds? 15 A. That's correct. That's why this 16 note is here. 17 Q. My point is that she's the one 18 that had to tell them to correct this; correct, 19 sir? 20 MR. BARNES: Objection. 21 THE WITNESS: She saw something 22 there she didn't like and she told them.</p>

HIGHLY CONFIDENTIAL

Rust, Marcus - Vol. II

March 6, 2014

12 (Pages 413 to 416)

<p style="text-align: right;">413</p> <p>1 BY MR. STUEVE:</p> <p>2 Q. And the thing she was</p> <p>3 communicating to was the folks that, in fact,</p> <p>4 are responsible for taking care of the flocks;</p> <p>5 correct?</p> <p>6 A. Yes. Ed at Donovan, my brother</p> <p>7 fired him. He got terminated. I don't know if</p> <p>8 it was over this incident, but there was another</p> <p>9 incident where he's one of -- he's one of the</p> <p>10 few people that was ever terminated for not</p> <p>11 taking care of birds properly. He was</p> <p>12 terminated. You can look at the employee</p> <p>13 records and see. He called me every</p> <p>14 six months -- every six weeks wanting his job</p> <p>15 back.</p> <p>16 Q. Sir, my point is is that it was</p> <p>17 your mother who had to write up the folks that,</p> <p>18 in fact, were responsible for taking care of the</p> <p>19 flocks; right?</p> <p>20 MR. BARNES: Objection to form.</p> <p>21 THE WITNESS: This was a note from</p> <p>22 her go through.</p>	<p style="text-align: right;">415</p> <p>1 of this. If we get audited and they find this</p> <p>2 we will fail the audit. I have done my best and</p> <p>3 don't know what to do now. Thanks, KY;" is that</p> <p>4 correct?</p> <p>5 A. That's what it says.</p> <p>6 Q. That would have been a</p> <p>7 communication to Lois Rust; is that right?</p> <p>8 A. Yes.</p> <p>9 Q. And Anthony Rust, your brother,</p> <p>10 who was responsible for the entire Rose Acre</p> <p>11 flocks; right?</p> <p>12 A. Right.</p> <p>13 Q. And this is indicating that KY</p> <p>14 cannot convince Anthony that the 30 percent on</p> <p>15 body weight reduction must be complied with;</p> <p>16 right?</p> <p>17 MR. BARNES: Objection to form.</p> <p>18 THE WITNESS: Can I go into</p> <p>19 explanation?</p> <p>20 BY MR. STUEVE:</p> <p>21 Q. I'm just asking you specifically</p> <p>22 that's what he's referring to?</p>
<p style="text-align: right;">414</p> <p>1 BY MR. STUEVE:</p> <p>2 Q. To the folks that, in fact, were</p> <p>3 responsibility for taking care of the birds;</p> <p>4 right?</p> <p>5 A. Correct.</p> <p>6 (Rust Exhibit Number 540 was</p> <p>7 marked for identification.)</p> <p>8 BY MR. STUEVE:</p> <p>9 Q. Show you what's been marked as</p> <p>10 540.</p> <p>11 And that's Bates range RAUPDATE</p> <p>12 0082871.</p> <p>13 Now, this is dated September 24,</p> <p>14 2003; is that correct?</p> <p>15 A. I'm reading. Yes.</p> <p>16 Q. I'm going to direct your attention</p> <p>17 to the note down at the bottom.</p> <p>18 A. Okay.</p> <p>19 Q. It says, "I want you to know on</p> <p>20 molts that we had a flock go above the</p> <p>21 30 percent on body weight reduction. I don't</p> <p>22 think this is good. I cannot convince Anthony</p>	<p style="text-align: right;">416</p> <p>1 MR. BARNES: Same objection.</p> <p>2 THE WITNESS: I'm not sure what</p> <p>3 he's referring to.</p> <p>4 BY MR. STUEVE:</p> <p>5 Q. You understood that one of the</p> <p>6 requirements of the UEP certified program was</p> <p>7 that if you were going to initiate a molt that</p> <p>8 it could not result in a bird losing more than</p> <p>9 30 percent of the body weight; correct?</p> <p>10 A. I can't answer that question in</p> <p>11 the context that you're asking it. I have to</p> <p>12 explain what the battle -- what they was</p> <p>13 fighting within the chicken.</p> <p>14 Q. I'm just asking you to answer my</p> <p>15 question.</p> <p>16 A. I can't answer it the way you</p> <p>17 asked it.</p> <p>18 Q. Read it back, please. Ask you to</p> <p>19 answer it.</p> <p>20 (The record was read as</p> <p>21 requested.)</p> <p>22 BY MR. STUEVE:</p>

HIGHLY CONFIDENTIAL

Rust, Marcus - Vol. II

March 6, 2014

13 (Pages 417 to 420)

<p style="text-align: right;">417</p> <p>1 Q. Let me restate it. The question</p> <p>2 is not correct.</p> <p>3 You understood that one of the</p> <p>4 requirements of the UEP certified program was</p> <p>5 that if you were going to initiate a molt birds</p> <p>6 could not lose more than 30 percent of their</p> <p>7 body weight; is that correct, sir?</p> <p>8 A. Yes. That's one of the</p> <p>9 requirements.</p> <p>10 Q. And in fact, KY has -- is</p> <p>11 identifying a violation of that guideline that</p> <p>12 he brought to the attention of Anthony; correct,</p> <p>13 sir?</p> <p>14 A. He was concerned that we were</p> <p>15 going to fail the audit.</p> <p>16 Q. Because he saw that the reduction</p> <p>17 in body weight of the flock was greater than</p> <p>18 30 percent; correct, sir?</p> <p>19 A. Can I explain something?</p> <p>20 Q. If you could just answer my</p> <p>21 question.</p> <p>22 A. I can't.</p>	<p style="text-align: right;">419</p> <p>1 happens is because they're in a cage and they</p> <p>2 can't move around, once that feed is in front of</p> <p>3 them you get four fat chickens in one cage and</p> <p>4 four skinny chickens in that cage, the skinny</p> <p>5 chickens got screwed.</p> <p>6 MR. STUEVE: I move to strike the</p> <p>7 answer as nonresponsive. If you would please</p> <p>8 read the question back for me, please. Ask you</p> <p>9 to answer it.</p> <p>10 (The record was read as</p> <p>11 requested.)</p> <p>12 MR. BARNES: Objection to the</p> <p>13 form. Asked and answered.</p> <p>14 THE WITNESS: I've answered it. I</p> <p>15 don't know how to answer that. You know, I</p> <p>16 don't know what you're asking.</p> <p>17 BY MR. STUEVE:</p> <p>18 Q. Sir, what he says is I want you to</p> <p>19 know on molts that we had a flock go above the</p> <p>20 30 percent on body weight reduction. Did I read</p> <p>21 that correctly?</p> <p>22 A. That's what it says there.</p>
<p style="text-align: right;">418</p> <p>1 Q. If you could read it back and ask</p> <p>2 him to answer it for me.</p> <p>3 (The record was read as</p> <p>4 requested.)</p> <p>5 MR. BARNES: Objection.</p> <p>6 THE WITNESS: I can't answer the</p> <p>7 question. You're calling -- we don't weigh the</p> <p>8 flock. You weigh individual chickens. If</p> <p>9 you've got a room of fat chickens and skinny</p> <p>10 chickens and they all eat out of one feed trough</p> <p>11 the weight loss that occurs to me a fat person</p> <p>12 and Joe as a fat person, it's going to be</p> <p>13 different than the weight loss that occurs to</p> <p>14 the skinny guy over here. And so what happens</p> <p>15 is when the auditor come in and they have this</p> <p>16 chicken weight and they say, oh, you can fail</p> <p>17 the audit because this chicken over here weighs</p> <p>18 too much, too less than what the fat chicken</p> <p>19 weighs. You're targeting, you're shotgunning,</p> <p>20 when we molt the flock of birds you're taking</p> <p>21 the feed away from all of them at once. We have</p> <p>22 fat chickens in there and skinny chickens. What</p>	<p style="text-align: right;">420</p> <p>1 Q. And that would, in fact, if that</p> <p>2 were true as indicated by KY Hendrix that would</p> <p>3 be a violation of one of the requirements of the</p> <p>4 UEP certified guidelines; correct, sir?</p> <p>5 A. If the auditors found it that way</p> <p>6 that's the way they would address it.</p> <p>7 Q. That would be a violation of one</p> <p>8 of the requirements; correct, sir?</p> <p>9 A. Correct.</p> <p>10 Q. He then states, "I don't think</p> <p>11 this is good." That's KY Hendrix; right?</p> <p>12 A. Correct.</p> <p>13 Q. One of his responsibilities is</p> <p>14 looking after the flock; right?</p> <p>15 A. And that's why I went into the fat</p> <p>16 chicken and skinny chicken thing with you.</p> <p>17 Q. Sir, I don't think this is good,</p> <p>18 that's from KY Hendrix, who is responsible for</p> <p>19 taking care of the flock; correct, sir?</p> <p>20 A. That's a problem with molting.</p> <p>21 That's why the animal righters want to kill us</p> <p>22 or shoot us for molting chickens. That's why</p>

HIGHLY CONFIDENTIAL

Rust, Marcus - Vol. II

March 6, 2014

14 (Pages 421 to 424)

<p style="text-align: right;">421</p> <p>1 they burn our feed trucks. That's why --</p> <p>2 MR. STUEVE: Sir, if you could</p> <p>3 read back my question and ask you to answer,</p> <p>4 please.</p> <p>5 (The record was read as</p> <p>6 requested.)</p> <p>7 THE WITNESS: I still don't</p> <p>8 understand what you're asking.</p> <p>9 BY MR. STUEVE:</p> <p>10 Q. Why don't you read it again. Tell</p> <p>11 me what you don't understand about that</p> <p>12 question.</p> <p>13 (The record was read as</p> <p>14 requested.)</p> <p>15 THE WITNESS: I still don't</p> <p>16 understand what you're asking.</p> <p>17 BY MR. STUEVE:</p> <p>18 Q. The statement that says, "I don't</p> <p>19 think this is good," was made by KY Hendrix, who</p> <p>20 was responsible for overseeing the flocks at</p> <p>21 Rose Acre; correct, sir?</p> <p>22 A. That's what it says.</p>	<p style="text-align: right;">423</p> <p>1 answer as nonresponsive. I'd ask for you to</p> <p>2 read the question back and ask the witness to</p> <p>3 answer it, please.</p> <p>4 (The record was read as</p> <p>5 requested.)</p> <p>6 MR. BARNES: Mr. Stueve, to</p> <p>7 shorten this up, we'll stipulate you read it</p> <p>8 correctly.</p> <p>9 MR. STUEVE: I want him to answer</p> <p>10 my question.</p> <p>11 BY MR. STUEVE:</p> <p>12 Q. Look at the notes. Are you at the</p> <p>13 notes there?</p> <p>14 A. It says what it says.</p> <p>15 Q. Hold on. Do you see the</p> <p>16 statement, "if we got audited and they find</p> <p>17 this, we will fail the audit." Do you see that</p> <p>18 statement?</p> <p>19 A. Yes.</p> <p>20 Q. That was a statement by KY</p> <p>21 Hendrix; right?</p> <p>22 A. Yes.</p>
<p style="text-align: right;">422</p> <p>1 Q. He goes on to say, "I cannot</p> <p>2 convince Anthony of this," who was your brother;</p> <p>3 right?</p> <p>4 A. Correct.</p> <p>5 Q. "If we got an audit and they find</p> <p>6 this, we will fail the audit." Did I read that</p> <p>7 correctly?</p> <p>8 A. And I go back to that's why it was</p> <p>9 a skinny chicken and fat chicken. He had</p> <p>10 certain chickens who lost more weight than they</p> <p>11 should. When you got fat chickens and skinny</p> <p>12 chickens in a cage, you take all the feed away,</p> <p>13 your weight loss for the different ones -- you</p> <p>14 don't know what each individual chicken weighed</p> <p>15 before you started. You have an average, take a</p> <p>16 target average of the whole house. If we</p> <p>17 averaged this room up the eight of us may</p> <p>18 average 200 pounds a piece. If we take all the</p> <p>19 feed away the proportion of weight loss is going</p> <p>20 to be different for different birds where they</p> <p>21 started from.</p> <p>22 MR. STUEVE: Move to strike the</p>	<p style="text-align: right;">424</p> <p>1 Q. And what he's referring to is the</p> <p>2 violation of the requirement that flocks in molt</p> <p>3 cannot lose more than 30 percent of their body</p> <p>4 weight; correct, sir?</p> <p>5 MR. BARNES: Objection.</p> <p>6 THE WITNESS: I am not sure what</p> <p>7 he's referring to.</p> <p>8 BY MR. STUEVE:</p> <p>9 Q. He says, "I have done my best and</p> <p>10 don't know what to do now;" right?</p> <p>11 A. I knew him and Anthony were at</p> <p>12 loggerheads over this fat chicken and skinny</p> <p>13 chicken thing in a cage.</p> <p>14 Q. If you could, sir, he states, "I</p> <p>15 have done my best and don't know what to do</p> <p>16 now." Did I read that correctly?</p> <p>17 A. That's what it says. You read</p> <p>18 that correctly. That's what it says.</p> <p>19 Q. Now, and the Anthony that he's</p> <p>20 referring to there --</p> <p>21 A. That's my brother.</p> <p>22 Q. Who KY reported to; is that</p>

HIGHLY CONFIDENTIAL

Rust, Marcus - Vol. II

March 6, 2014

15 (Pages 425 to 428)

<p style="text-align: right;">425</p> <p>1 correct?</p> <p>2 A. Correct.</p> <p>3 Q. All right. Now, we saw earlier</p> <p>4 that in one of the brochures about Rose Acre</p> <p>5 that it has a zero tolerance policy with respect</p> <p>6 to animal welfare issues?</p> <p>7 A. Yes.</p> <p>8 Q. The 30 percent of body weight</p> <p>9 reduction requirement in the UEP guidelines, is</p> <p>10 that an animal welfare guideline?</p> <p>11 A. I believe it is. Yes.</p> <p>12 Q. And one of your employees who's</p> <p>13 responsible for taking care of the flock</p> <p>14 believed that Rose Acre was in violation of that</p> <p>15 requirement; correct?</p> <p>16 A. But another one of the employees</p> <p>17 owners disagreed with his thinking of it.</p> <p>18 MR. STUEVE: Move to strike the</p> <p>19 answer as nonresponsive. Ask you to read it</p> <p>20 back to him, ask you to answer it.</p> <p>21 (The record was read as</p> <p>22 requested.)</p>	<p style="text-align: right;">427</p> <p>1 enough points to fail the overall audit;</p> <p>2 correct, sir?</p> <p>3 A. I'm not sure. I don't recollect</p> <p>4 the points for which things were -- I don't</p> <p>5 think it would have.</p> <p>6 (Rust Exhibit Number 541 was</p> <p>7 marked for identification.)</p> <p>8 BY MR. STUEVE:</p> <p>9 Q. I'll show you what's been marked</p> <p>10 Exhibit 541, it's RA 0068166 to 167. It's a</p> <p>11 document that was produced by Rose Acre.</p> <p>12 Did you review this in preparation</p> <p>13 for your deposition today?</p> <p>14 A. I could have. Let me read it</p> <p>15 first.</p> <p>16 MR. BARNES: Counsel, is that your</p> <p>17 underlining on the document?</p> <p>18 MR. STUEVE: No. This was what</p> <p>19 was produced to us.</p> <p>20 MR. BARNES: Okay.</p> <p>21 THE WITNESS: I don't recall</p> <p>22 seeing this.</p>
<p style="text-align: right;">426</p> <p>1 MR. BARNES: Objection. Asked and</p> <p>2 answered.</p> <p>3 THE WITNESS: My brother thought</p> <p>4 it meant one thing, KY thought it meant another.</p> <p>5 I -- one is my brother, one is my</p> <p>6 brother-in-law. Who is right or wrong, I have</p> <p>7 no idea.</p> <p>8 MR. STUEVE: I'm going to read</p> <p>9 back the question one more time. I'm going to</p> <p>10 give you one more chance to answer it.</p> <p>11 (The record was read as</p> <p>12 requested.)</p> <p>13 MR. BARNES: Same objection.</p> <p>14 THE WITNESS: One agreed. One</p> <p>15 disagreed. The document says.</p> <p>16 BY MR. STUEVE:</p> <p>17 Q. Did -- do you know if Rose Acre</p> <p>18 failed the audit at the end of 2003?</p> <p>19 A. I don't recollect.</p> <p>20 Q. Now, even if Rose Acre had</p> <p>21 violated the 30 percent body weight reduction</p> <p>22 requirement, that still wouldn't result in</p>	<p style="text-align: right;">428</p> <p>1 BY MR. STUEVE:</p> <p>2 Q. You can confirm the Bates range</p> <p>3 starts with RA at the bottom; right?</p> <p>4 A. Yes.</p> <p>5 Q. All right. And if you could, if</p> <p>6 you look at the document, let's look at the</p> <p>7 underlined portion there, the bottom half</p> <p>8 starting with "however." Do you see that?</p> <p>9 A. Uh-huh.</p> <p>10 Q. "However, for the most obvious</p> <p>11 measures of bird welfare, that is the number of</p> <p>12 birds dying, being cold and unfit and showing</p> <p>13 leg defects, there was no effect of stock</p> <p>14 density." Do you see that?</p> <p>15 A. Yes.</p> <p>16 Q. "Rather, the study found that the</p> <p>17 big difference came from the temperature and</p> <p>18 humidity of the hen house, the moisture of the</p> <p>19 birds' litter and anomia in the air from their</p> <p>20 feces"?</p> <p>21 A. This is free range broiler</p> <p>22 chickens. We don't raise broilers. I have no</p>

HIGHLY CONFIDENTIAL

Rust, Marcus - Vol. II

March 6, 2014

16 (Pages 429 to 432)

<p style="text-align: right;">429</p> <p>1 idea about broiler stuff. This has no bearing 2 on us at all. I don't know what it means. 3 MR. STUEVE: Move to strike the 4 answer as nonresponsive. Can you read my 5 question -- 6 THE WITNESS: I'm just reading 7 what it says here. It says right here -- it 8 says, "her team monitored the health of 9 2.7 million broilers from ten major firms, which 10 produced these chickens for meat. The study was 11 cited as finding that the chickens were housed 12 in the highest density and indeed jostled each 13 other for more and grew more slowly than others, 14 but added that however for the most obvious 15 measures of bird welfare, that is" -- 16 BY MR. STUEVE: 17 Q. Sir, that's not my question. I'm 18 going to interrupt you because that is not my 19 question. If you'd answer my question. 20 I ask your counsel to instruct him 21 to answer my question that I've asked. 22 MR. BARNES: I've done so. I</p>	<p style="text-align: right;">431</p> <p>1 the air from their feces. Did I read that 2 correctly? 3 A. That's what you read here 4 correctly. Yes. 5 Q. And then it says, "damp litter 6 from urine and higher levels of air anomia were 7 linked with higher concentrations of 8 cardiocoseriod (phonetic), a hormone that is 9 considered an indicator of stress and hen houses 10 that were badly managed where temperature and 11 humidity persistently fell below or rose beyond 12 the recommended range for the breed of chickens 13 were punished with higher mortality rates and 14 sicker, scrawnier birds." Did I read that 15 correctly? 16 A. That's what you're reading 17 correctly. This is stupid. This is a broiler 18 chicken. 19 MR. BARNES: I just want the 20 record to reflect I'm going move to strike any 21 interrogation regarding this document, which has 22 nothing to do with the business of Rose Acre</p>
<p style="text-align: right;">430</p> <p>1 don't believe you had a question pending. 2 MR. STUEVE: I did. 3 MR. BARNES: Let's read it back. 4 THE WITNESS: Read the question 5 back. 6 (The record was read as 7 requested.) 8 MR. BARNES: Objection. I don't 9 see a question mark at the end of that. You 10 were reading the document into the record. 11 BY MR. STUEVE: 12 Q. Let me -- I had asked that 13 question up above and he interrupted me. 14 So if you could, you see the 15 rather there starting with the word rather 16 that's underlined in Rose Acre's document? 17 A. Yeah. 18 Q. It -- does it state there in the 19 document produced by Rose Acre, that rather the 20 study found that the big difference came from 21 the temperature and humidity of the hen house, 22 the moisture of the birds' litter and ammonia in</p>	<p style="text-align: right;">432</p> <p>1 Farms. It has to do with broiler chickens. 2 Rose Acre doesn't produce broiler chickens. 3 BY MR. STUEVE: 4 Q. Sir, if you would, who sent this 5 e-mail? Can you -- do you know who 6 Mr. Armstrong is? 7 A. Yes. He was the head of the 8 Scientific Committee. 9 Q. That -- for the animal welfare 10 program for UEP certified; correct? 11 A. Right. 12 Q. So the gentleman that was running 13 the program believed that this document was 14 relevant to the program; correct, sir? 15 MR. BARNES: Object to that. 16 THE WITNESS: I have no idea. 17 BY MR. STUEVE: 18 Q. Well, he sent it to the members of 19 the Scientific Committee; correct? 20 MR. BARNES: I object to that. 21 THE WITNESS: I have no idea what 22 he sent them.</p>

HIGHLY CONFIDENTIAL

Rust, Marcus - Vol. II

March 6, 2014

17 (Pages 433 to 436)

<p style="text-align: right;">433</p> <p>1 BY MR. STUEVE:</p> <p>2 Q. Well, I'm saying who. Do you know</p> <p>3 who the folks are that he sent it to?</p> <p>4 A. Yeah. They're the Scientific</p> <p>5 Committee.</p> <p>6 Q. Right. The Scientific Committee</p> <p>7 that was purportedly responsible for developing</p> <p>8 the UEP certified guidelines; right?</p> <p>9 A. Yes.</p> <p>10 Q. And this document ultimately was</p> <p>11 provided to Rose Acre; correct?</p> <p>12 A. Yes.</p> <p>13 Q. All right. Do you know what the</p> <p>14 ammonia standards were that were recommended by</p> <p>15 the Scientific Committee?</p> <p>16 A. There's a number. I don't</p> <p>17 recollect what the standard is exactly.</p> <p>18 Q. And Rose Acre doesn't meet that</p> <p>19 ammonia standard; does it?</p> <p>20 A. In the wintertime sometimes we</p> <p>21 don't when it gets real cold out.</p> <p>22 Q. And have you ever failed an audit</p>	<p style="text-align: right;">435</p> <p>1 was produced by Rose Acre; is that correct?</p> <p>2 A. Yes.</p> <p>3 Q. So if you could turn to page 2 of</p> <p>4 this document. It's discussing the topic of</p> <p>5 backfilling, a loophole of a hangman noose?</p> <p>6 A. Okay.</p> <p>7 Q. Is that an editorial by Al Pope?</p> <p>8 A. Yes.</p> <p>9 Q. He's one of the folks at UEP you</p> <p>10 don't trust; is that right?</p> <p>11 A. Yes.</p> <p>12 Q. And he starts, "whose program is</p> <p>13 it anyway, this UEP animal certified program?</p> <p>14 It's really -- it's not really UEP's per se,</p> <p>15 certainly not UEP staff, know the program</p> <p>16 belongs to those of you who are participating in</p> <p>17 the program. You decide how the program</p> <p>18 operates." Did I read that correctly?</p> <p>19 A. Yes.</p> <p>20 Q. And he says, "in this regard, the</p> <p>21 original intent of permitting animal care</p> <p>22 certified companies to backfill was to</p>
<p style="text-align: right;">434</p> <p>1 as a result of that?</p> <p>2 A. I'm not sure that we have or not.</p> <p>3 Q. Well, you've never -- you've never</p> <p>4 been decertified as a result of Rose Acre not</p> <p>5 meeting ammonia requirements; correct?</p> <p>6 A. No.</p> <p>7 Q. Is that right?</p> <p>8 A. As long as you have chickens and</p> <p>9 manure in the chicken house, different weather</p> <p>10 conditions you can have too much ammonia.</p> <p>11 Q. My question is, I would ask for</p> <p>12 you to answer it, Rose Acre has never been</p> <p>13 decertified as a result of it not meeting the</p> <p>14 ammonia requirements of the UEP guidelines;</p> <p>15 correct, sir?</p> <p>16 A. Correct.</p> <p>17 Q. Show you what's previously been</p> <p>18 marked as Exhibit 248.</p> <p>19 This is United Voices dated</p> <p>20 August 12, 2004; is that correct?</p> <p>21 A. Yes.</p> <p>22 Q. And this is a United Voices that</p>	<p style="text-align: right;">436</p> <p>1 accommodate those few extra unexpected pullets</p> <p>2 from a grow out facility." Do you see that?</p> <p>3 A. Yes.</p> <p>4 Q. What he's referring to there is</p> <p>5 that backfilling was permitted under the animal</p> <p>6 care certified program initially; is that right?</p> <p>7 A. Yes.</p> <p>8 MR. BARNES: Object to form.</p> <p>9 BY MR. STUEVE:</p> <p>10 Q. Backfilling was not considered an</p> <p>11 animal welfare issue under the guidelines as</p> <p>12 initially drafted; correct?</p> <p>13 A. I don't recollect that. I don't</p> <p>14 recollect what the -- when the guidelines</p> <p>15 changed.</p> <p>16 Q. But you do recall they were</p> <p>17 changed; right?</p> <p>18 A. Right.</p> <p>19 Q. And the reason why they were</p> <p>20 changed was because the backfilling was reducing</p> <p>21 the impact of the supply reduction that the cage</p> <p>22 space requirement was intended to achieve;</p>

HIGHLY CONFIDENTIAL

Rust, Marcus - Vol. II

March 6, 2014

18 (Pages 437 to 440)

<p style="text-align: right;">437</p> <p>1 correct, sir?</p> <p>2 MS. LEVINE: Objection. Jan</p> <p>3 Levine.</p> <p>4 THE WITNESS: Repeat the question</p> <p>5 again.</p> <p>6 MR. STUEVE: Read it back, please.</p> <p>7 (The record was read as</p> <p>8 requested.)</p> <p>9 MS. LEVINE: Same objection. Jan</p> <p>10 Levine.</p> <p>11 THE WITNESS: I'm reading it.</p> <p>12 MR. BARNES: Do you want to repeat</p> <p>13 your question?</p> <p>14 BY MR. STUEVE:</p> <p>15 Q. Sir, do you want her to read it</p> <p>16 back to you so you can answer it?</p> <p>17 A. Well, let me finish reading this.</p> <p>18 Okay.</p> <p>19 MR. STUEVE: Can you read the</p> <p>20 question back?</p> <p>21 (The record was read as</p> <p>22 requested.)</p>	<p style="text-align: right;">439</p> <p>1 Q. Excuse me. October 20th; is that</p> <p>2 right?</p> <p>3 A. Yes.</p> <p>4 Q. Okay. Now, he discusses, says</p> <p>5 identified below. Do you see that?</p> <p>6 A. Where are you at?</p> <p>7 Q. A little bit further down it says,</p> <p>8 "identified below are recommendations that came</p> <p>9 from the area meetings that need to be on the</p> <p>10 agenda and decisions made." Do you see that?</p> <p>11 A. Yes.</p> <p>12 Q. So he's identifying what the</p> <p>13 agenda is for the Animal Welfare Committee</p> <p>14 meeting that's set for October 20th; right?</p> <p>15 A. Yes.</p> <p>16 Q. And the first one is, "disallow</p> <p>17 backfilling of cages by animal care certified</p> <p>18 companies." Do you see that?</p> <p>19 A. Yes.</p> <p>20 Q. That, again, is an attempt to</p> <p>21 address supply management issues; right?</p> <p>22 MS. LEVINE: Object to the form.</p>
<p style="text-align: right;">438</p> <p>1 MS. LEVINE: Same objection.</p> <p>2 THE WITNESS: That's what it says.</p> <p>3 BY MR. STUEVE:</p> <p>4 Q. Now, let me show you what's been</p> <p>5 marked as Exhibit 542.</p> <p>6 (Rust Exhibit Number 542 was</p> <p>7 marked for identification.)</p> <p>8 MR. STUEVE: Bates range MFC</p> <p>9 0017617.</p> <p>10 This is an e-mail dated</p> <p>11 September 15, 2004 from Gene Gregory and it was</p> <p>12 sent to, among others, KY Hendrix of Rose Acre;</p> <p>13 is that correct, sir.</p> <p>14 THE WITNESS: Yes.</p> <p>15 BY MR. STUEVE:</p> <p>16 Q. And if you would, in the first</p> <p>17 paragraph there it's the committee meeting in</p> <p>18 the subject line is referring to an Animal</p> <p>19 Welfare Committee meeting that occurred in New</p> <p>20 Orleans on September 15, 2004; is that correct?</p> <p>21 A. That's what it says. You said</p> <p>22 September, it says October.</p>	<p style="text-align: right;">440</p> <p>1 THE WITNESS: I have no idea. It</p> <p>2 says right here number one, disallow backfilling</p> <p>3 cages by animal care -- I don't see the supply</p> <p>4 management part in there.</p> <p>5 BY MR. STUEVE:</p> <p>6 Q. We just saw earlier, though, the</p> <p>7 hangman noose that concerned --</p> <p>8 A. It also said in there that animal</p> <p>9 care program was not an animal -- was not a</p> <p>10 supply management program.</p> <p>11 Q. Right. It said that and then it</p> <p>12 goes on to talk about supply management issues;</p> <p>13 doesn't it, Mr. Rust?</p> <p>14 MR. BARNES: Objection.</p> <p>15 THE WITNESS: I don't recollect --</p> <p>16 I would have to go back and read it.</p> <p>17 BY MR. STUEVE:</p> <p>18 Q. But the hangman noose, which we've</p> <p>19 confirmed what they're talking about there, is</p> <p>20 the use of backfilling, that backfilling was</p> <p>21 reducing the impact of the cage space</p> <p>22 requirements; correct?</p>

HIGHLY CONFIDENTIAL

Rust, Marcus - Vol. II

March 6, 2014

19 (Pages 441 to 444)

<p style="text-align: right;">441</p> <p>1 MR. BARNES: Object to form.</p> <p>2 THE WITNESS: I'm not sure at that</p> <p>3 point.</p> <p>4 BY MR. STUEVE:</p> <p>5 Q. If you would, as far as the</p> <p>6 timing, we were looking at Exhibit 248. And</p> <p>7 that -- that was the August 2004 United Voices;</p> <p>8 right?</p> <p>9 MR. BARNES: Exhibit 248.</p> <p>10 BY MR. STUEVE:</p> <p>11 Q. At the bottom. If you would, on</p> <p>12 the first page of Exhibit 248 that's -- that</p> <p>13 came out in August 2004; right?</p> <p>14 A. Yes.</p> <p>15 Q. And that's the -- that we just</p> <p>16 went through that had the article about</p> <p>17 backfilling a loophole of a hangman noose;</p> <p>18 right?</p> <p>19 A. It says a year later while the ATC</p> <p>20 program --</p> <p>21 Q. Sir, if you could just answer my</p> <p>22 question.</p>	<p style="text-align: right;">443</p> <p>1 document away. Just put 542 in front of you.</p> <p>2 A. Okay.</p> <p>3 Q. That's a document in September of</p> <p>4 2004 proposing an agenda for October 20th of</p> <p>5 2004; right?</p> <p>6 A. Yes.</p> <p>7 Q. So approximately three months</p> <p>8 after the United Voices came out with the</p> <p>9 article about backfilling this is proposing an</p> <p>10 agenda for the Animal Welfare Committee and the</p> <p>11 first item is disallow backfilling; right?</p> <p>12 A. Yes.</p> <p>13 Q. The second item is conduct random</p> <p>14 audits of space per hen; right?</p> <p>15 A. Yes.</p> <p>16 Q. And again, that space per hen, in</p> <p>17 order for the reduction in supply of eggs to</p> <p>18 occur through the cage reduction requirements,</p> <p>19 all of the certified companies need to comply</p> <p>20 with that; right?</p> <p>21 MR. BARNES: Object to form.</p> <p>22 THE WITNESS: To meet the</p>
<p style="text-align: right;">442</p> <p>1 A. I'm just reading what it says</p> <p>2 here.</p> <p>3 Q. My question is, this is in August</p> <p>4 of 2004 United Voices had the article</p> <p>5 backfilling a loophole of a hangman noose;</p> <p>6 right?</p> <p>7 A. Correct.</p> <p>8 Q. And then if you look at 542, the</p> <p>9 agenda for the animal welfare meeting for</p> <p>10 October 20th of that very same year; right,</p> <p>11 2004; right?</p> <p>12 A. You got me confused here.</p> <p>13 Q. Just trying to walk through a</p> <p>14 chronology here. United Voices identifying the</p> <p>15 backfilling a loophole of a hangman noose is</p> <p>16 dated August 12, 2004; right?</p> <p>17 A. Yes.</p> <p>18 Q. Then if you could turn to 542 --</p> <p>19 are you there? This is Exhibit 542. Are you</p> <p>20 there?</p> <p>21 A. That's this one.</p> <p>22 Q. All right. You can put the other</p>	<p style="text-align: right;">444</p> <p>1 requirements that our egg customers as Kroger,</p> <p>2 Wal-Mart required, to get the space requirement</p> <p>3 they wanted end of year we had to go into a</p> <p>4 program that gave more space.</p> <p>5 MR. STUEVE: Move to strike the</p> <p>6 answer as nonresponsive. Read back my question</p> <p>7 and ask you to answer for me, please.</p> <p>8 (The record was read as</p> <p>9 requested.)</p> <p>10 MR. BARNES: Same objection. Go</p> <p>11 ahead and answer it.</p> <p>12 THE WITNESS: I would say no.</p> <p>13 BY MR. STUEVE:</p> <p>14 Q. The purpose of the random audits,</p> <p>15 the random audits that were being proposed by</p> <p>16 the animal welfare only pertained to space per</p> <p>17 hen; correct?</p> <p>18 A. Correct.</p> <p>19 Q. All right. They didn't suggest a</p> <p>20 random audit for ammonia levels; correct?</p> <p>21 A. Correct.</p> <p>22 Q. They didn't suggest a random audit</p>

HIGHLY CONFIDENTIAL

Rust, Marcus - Vol. II

March 6, 2014

20 (Pages 445 to 448)

<p style="text-align: right;">445</p> <p>1 for the 30 percent weight reduction requirement; 2 correct?</p> <p>3 MR. BARNES: Are you referring to 4 Exhibit 542?</p> <p>5 THE WITNESS: I think the audits 6 were random.</p> <p>7 BY MR. STUEVE:</p> <p>8 Q. Sir, the reference in here to the 9 random audits was specific to space per hen; 10 right?</p> <p>11 MR. BARNES: Objection. The 12 document speaks for itself. It says what it 13 says.</p> <p>14 THE WITNESS: I'm not sure what 15 the audit parts were.</p> <p>16 BY MR. STUEVE:</p> <p>17 Q. With respect to bullet point 18 number two, conduct random audits?</p> <p>19 A. That's what that says.</p> <p>20 Q. Of space per hen; right?</p> <p>21 A. That's what that says.</p> <p>22 Q. Not for any other item; correct?</p>	<p style="text-align: right;">447</p> <p>1 This document, if you could, look 2 at the fourth bullet point down.</p> <p>3 MR. BARNES: Counsel, excuse me. 4 I don't know if the witness can see this 5 document. It is marked highly confidential and 6 it was produced by Moark. I don't know. Are 7 you entitled to show him this?</p> <p>8 MR. STUEVE: I'm entitled to ask 9 any witness questions about documents in the 10 case.</p> <p>11 MR. MONICA: Not that we haven't 12 produced. If it's marked highly confidential 13 and we didn't produce it, you can't show it to 14 him.</p> <p>15 MR. STUEVE: I'm entitled to ask 16 this witness a question about information that 17 is relevant to this topic.</p> <p>18 MR. MONICA: If you're violating 19 the protective order --</p> <p>20 MR. STUEVE: I don't believe I am. 21 I don't believe the protective order prevents me 22 from asking a corporate rep --</p>
<p style="text-align: right;">446</p> <p>1 A. It's not listed here.</p> <p>2 Q. And then if you look at number 3 five it says, "establish a policy that animal 4 care certified companies may not purchase eggs 5 from noncertified companies." Do you see that?</p> <p>6 A. Yes.</p> <p>7 Q. Were you aware that that was being 8 recommended by the Animal Welfare Committee?</p> <p>9 MS. LEVINE: Object to the form of 10 the question.</p> <p>11 THE WITNESS: I was not aware.</p> <p>12 BY MR. STUEVE:</p> <p>13 Q. Do you remember that that policy 14 was ultimately adopted by the Board that you sat 15 on for UEP?</p> <p>16 MS. LEVINE: Object to the form of 17 the question.</p> <p>18 THE WITNESS: I don't recollect 19 right offhand.</p> <p>20 BY MR. STUEVE:</p> <p>21 Q. I'll show you what's been marked 22 as 277.</p>	<p style="text-align: right;">448</p> <p>1 MR. MONICA: Produced by another 2 company. It's is highly confidential produced 3 by Moark. It is proprietary information 4 produced by Moark.</p> <p>5 MR. STUEVE: Why don't we resolve 6 it off the record.</p> <p>7 MR. MONICA: Why don't we can take 8 a break. It's been an hour and a half any way.</p> <p>9 MR. BARNES: That's fine. Why 10 don't we give Moark's counsel the document 11 numbers.</p> <p>12 MR. STUEVE: Exhibit 277.</p> <p>13 MR. BARNES: In Gregory's 14 deposition it bears identification numbers 15 Moark --</p> <p>16 MR. STUEVE: Let's go off the 17 record.</p> <p>18 MR. BARNES: Yeah.</p> <p>19 THE VIDEOGRAPHER: Off the record 20 at 10:31 a.m. 21 (A brief recess was taken.) 22 THE VIDEOGRAPHER: This is the</p>

HIGHLY CONFIDENTIAL

Rust, Marcus - Vol. II

March 6, 2014

21 (Pages 449 to 452)

<p style="text-align: right;">449</p> <p>1 beginning of tape number two. Back on the 2 record at 10:50 a.m.</p> <p>3 MR. STUEVE: Just for the record, 4 counsel for Rose Acre, prior to the break, 5 raised the issue of a highly confidential 6 document being presented to the witness. We 7 have resolved that issue with Moark, the 8 producing party. We've remarked the document as 9 and only the first and second pages as Rust 543 10 and it's Bates range Moark 0019049, actually 11 just the first page, 19049 and Moark has agreed 12 to designate just this page as confidential so 13 we can ask the witness a question.</p> <p>14 Vanessa, is that correct.</p> <p>15 MS. JACOBSEN: That is correct.</p> <p>16 (Rust Exhibit Number 543 was 17 marked for identification.)</p> <p>18 BY MR. STUEVE:</p> <p>19 Q. Okay. Let me show you what's been 20 marked as 543.</p> <p>21 So, if you would, on the fourth 22 bullet point?</p>	<p style="text-align: right;">451</p> <p>1 2006, four years after the UEP certified program 2 was first initiated backfilling was banned; 3 right?</p> <p>4 A. We were a backfilling company and 5 KY -- if it would have been a voting thing we 6 would have probably voted for backfilling to 7 continue.</p> <p>8 Q. But my question is, you were aware 9 that four years after the UEP certified program 10 was implemented that the Board approved a 11 prohibition against backfilling; correct?</p> <p>12 A. Yeah. Yeah.</p> <p>13 Q. All right. And it -- the purpose 14 of that was, in fact, to make sure that the 15 reduced cage requirements had their intended 16 effect of reducing the supply of eggs; correct, 17 sir?</p> <p>18 MS. LEVINE: Objection.</p> <p>19 THE WITNESS: I do not believe 20 that was the Scientific Committee's opinion of 21 it. There was a lot of argument about the 22 backfilling issue.</p>
<p style="text-align: right;">450</p> <p>1 A. I like the second paragraph best.</p> <p>2 Q. If you would, on the fourth bullet 3 point there?</p> <p>4 A. Fourth?</p> <p>5 Q. Yeah. Starting with the layer 6 inventory?</p> <p>7 A. Yes.</p> <p>8 Q. It says, "the layer inventory has 9 the potential to grow towards 300 million by 10 1/1/2006 unless the industry intervenes." Did I 11 read that correctly?</p> <p>12 A. Yes.</p> <p>13 Q. "This intervention has started 14 with the UEP restriction on backfilling cages to 15 meet animal care certification." Do you recall 16 that?</p> <p>17 A. That's what it says.</p> <p>18 Q. Do you remember voting as a Board 19 member to prevent backfilling?</p> <p>20 A. I don't recall the actual voting 21 on that, but --</p> <p>22 Q. You were aware that backfilling in</p>	<p style="text-align: right;">452</p> <p>1 BY MR. STUEVE:</p> <p>2 Q. The economic justification for 3 prohibiting backfilling was to make sure that 4 the cage space requirements had their intended 5 effect of reducing the supply of eggs; correct, 6 sir?</p> <p>7 MS. LEVINE: Objection.</p> <p>8 THE WITNESS: Repeat the question.</p> <p>9 You're making a statement. You're not making a 10 question.</p> <p>11 MR. STUEVE: Read it back.</p> <p>12 (The record was read as 13 requested.)</p> <p>14 MS. LEVINE: Objection.</p> <p>15 THE WITNESS: No.</p> <p>16 BY MR. STUEVE:</p> <p>17 Q. That's certainly what's indicated 18 in Exhibit 543; isn't it, sir?</p> <p>19 A. That's what you say is indicated. 20 That's what it says.</p> <p>21 Q. Well, it says, "the layer 22 inventory has the potential to grow towards</p>

HIGHLY CONFIDENTIAL

Rust, Marcus - Vol. II

March 6, 2014

22 (Pages 453 to 456)

<p style="text-align: right;">453</p> <p>1 300 million by 1/1/2006 unless the industry 2 intervenes;" right?</p> <p>3 A. That's what this document says.</p> <p>4 Q. The intervention that is 5 identified is the prohibition against 6 backfilling; right?</p> <p>7 A. That's what it says.</p> <p>8 MR. BARNES: Objection.</p> <p>9 BY MR. STUEVE:</p> <p>10 Q. And the prohibition of backfilling 11 was intended to make sure that the cage space 12 reduction requirements had their intended 13 purpose of reducing the supply of eggs; correct, 14 sir?</p> <p>15 A. No.</p> <p>16 MS. LEVINE: Objection.</p> <p>17 BY MR. STUEVE:</p> <p>18 Q. What was the economic 19 justification for backfilling, as outlined in 20 this document, sir?</p> <p>21 MR. BARNES: Objection. There is 22 no evidence, there is no testimony this witness</p>	<p style="text-align: right;">455</p> <p>1 backfillers of the industry.</p> <p>2 Q. Did you ever -- did you admit to 3 anyone at the Board after the backfilling 4 requirement was implemented that you were 5 violating that requirement?</p> <p>6 A. We never violated it after it 7 become part of the program.</p> <p>8 Q. Well, I thought you just testified 9 you continued to backfill?</p> <p>10 A. No. I testified that we were one 11 of the lead backfillers in the industry.</p> <p>12 Q. Right. So did you stop 13 backfilling?</p> <p>14 A. Yes.</p> <p>15 Q. When?</p> <p>16 A. After the -- there was a lot of 17 discussion within the scientific community, KY 18 and my brother -- my brother always wanted to do 19 it and I don't recollect what KY's position was 20 on it. We needed all the eggs we could get for 21 our breaking point.</p> <p>22 Q. You understood that the -- that</p>
<p style="text-align: right;">454</p> <p>1 has ever seen this document before, it was never 2 sent to him. It's a Moark document. We don't 3 know who wrote it. You've obviously asked Gene 4 Gregory about it, but if this witness can answer 5 the question he can certainly try. I think it's 6 an unfair question and I object to it.</p> <p>7 THE WITNESS: I have no knowledge 8 what they mean here.</p> <p>9 BY MR. STUEVE:</p> <p>10 Q. You have no knowledge of what they 11 mean here?</p> <p>12 A. No.</p> <p>13 Q. All right. You never heard any 14 discussion at the Board level that we needed to 15 pass the backfilling ban in order to ensure that 16 the cage space requirements had their intended 17 purpose of reducing the supply of eggs?</p> <p>18 A. I don't recall.</p> <p>19 Q. Is it your testimony that despite 20 the ban against backfilling that Rose Acre 21 continued to backfill?</p> <p>22 A. We were one of the primary</p>	<p style="text-align: right;">456</p> <p>1 the implementation of the backfilling ban was a 2 supply management purpose?</p> <p>3 A. It was something that the 4 Scientific Committee had opposed from the 5 beginning, to my understanding.</p> <p>6 Q. Sir, that's not what's been 7 reflected in these documents we've looked at; is 8 it?</p> <p>9 MS. LEVINE: Objection.</p> <p>10 THE WITNESS: You have what's 11 called the hen pecking order. And when you take 12 a chicken that doesn't -- that grew out of one 13 cage and put it in another cage the other 14 chickens will peck that chicken to death in that 15 cage. You know, it increases mortality.</p> <p>16 BY MR. STUEVE:</p> <p>17 Q. Sir, we've seen the backfilling 18 recommendation actually came from the -- not 19 from the Scientific Committee, but from the 20 committees at UEP; correct, sir?</p> <p>21 MS. LEVINE: Objection.</p> <p>22 MR. BARNES: Objection.</p>

HIGHLY CONFIDENTIAL

Rust, Marcus - Vol. II

March 6, 2014

23 (Pages 457 to 460)

<p style="text-align: right;">457</p> <p>1 THE WITNESS: I don't recollect.</p> <p>2 BY MR. STUEVE:</p> <p>3 Q. Did you vote as a Board member in</p> <p>4 favor of the banning of backfilling in 2006?</p> <p>5 A. I don't recollect how I voted on</p> <p>6 that. I would have probably voted against it.</p> <p>7 Q. And the reason why you would have</p> <p>8 voted against it was because it was a supply</p> <p>9 restriction; fair enough, sir?</p> <p>10 A. Repeat your question.</p> <p>11 MR. STUEVE: Read it back to him,</p> <p>12 please.</p> <p>13 (The record was read as</p> <p>14 requested.)</p> <p>15 THE WITNESS: I'm not sure -- go</p> <p>16 through it again.</p> <p>17 (The record was read as</p> <p>18 requested.)</p> <p>19 THE WITNESS: Probably.</p> <p>20 (Rust Exhibit Number 544 was</p> <p>21 marked for identification.)</p> <p>22 MR. STUEVE: 544 is RA 0067466</p>	<p style="text-align: right;">459</p> <p>1 keep doing what we are doing currently."</p> <p>2 And what he's referring to there</p> <p>3 is that the body weight loss of the flocks is</p> <p>4 exceeding the 30 percent limit; correct, sir?</p> <p>5 MR. BARNES: Object.</p> <p>6 THE WITNESS: I have no idea what</p> <p>7 he's referring to.</p> <p>8 BY MR. STUEVE:</p> <p>9 Q. Well, it will cost us five points</p> <p>10 if we keep doing what we're doing currently.</p> <p>11 What other requirement applied to</p> <p>12 the fast other than the 30 percent requirement</p> <p>13 in the animal welfare guidelines?</p> <p>14 A. I'm not sure.</p> <p>15 Q. Are you aware of any other?</p> <p>16 A. I'm not sure on that part.</p> <p>17 Q. But there -- he is, in fact,</p> <p>18 acknowledging that Rose Acre is not in</p> <p>19 compliance with the molting requirements;</p> <p>20 correct, sir?</p> <p>21 A. I'm not sure what he refers to</p> <p>22 there.</p>
<p style="text-align: right;">458</p> <p>1 through 67.</p> <p>2 If you would, on Exhibit 544 under</p> <p>3 D, this is a document prepared by KY Hendrix to</p> <p>4 all complex managers production managers;</p> <p>5 correct.</p> <p>6 THE WITNESS: Yes.</p> <p>7 BY MR. STUEVE:</p> <p>8 Q. And this is dated May 31, 2005?</p> <p>9 A. Yes.</p> <p>10 Q. And it says under D1, under molt</p> <p>11 standards are a bit different than the previous</p> <p>12 years. Do you see that?</p> <p>13 A. Yes.</p> <p>14 Q. It says, "body weights need to be</p> <p>15 monitored daily during the fast." What we're</p> <p>16 talking about the fast, this is the period in</p> <p>17 which you all are withholding food from the</p> <p>18 flock; correct?</p> <p>19 A. Correct.</p> <p>20 Q. "And this is something that I have</p> <p>21 fought since the beginning and I have finally</p> <p>22 given up on. It will cost us five points if we</p>	<p style="text-align: right;">460</p> <p>1 Q. It says, "this is something that I</p> <p>2 have fought since the beginning and I have</p> <p>3 finally given up on. It will cost us</p> <p>4 five points if we keep doing what we are doing</p> <p>5 currently.</p> <p>6 If we lose five points I'm not too</p> <p>7 worried as long as we pass the 170 or greater.</p> <p>8 170 points is the least points you can get and</p> <p>9 still pass." Do you see that?</p> <p>10 A. Yeah.</p> <p>11 Q. Now, I thought Rose Acre had a</p> <p>12 zero tolerance policy on animal welfare issues?</p> <p>13 A. I'm not sure what he's referring</p> <p>14 to here.</p> <p>15 Q. This certainly doesn't indicate a</p> <p>16 zero tolerance; does it?</p> <p>17 MR. BARNES: Objection to form.</p> <p>18 THE WITNESS: Nothing that talks</p> <p>19 about animal welfare. They're talking about</p> <p>20 body weight. I don't know what he's referring</p> <p>21 to.</p> <p>22 BY MR. STUEVE:</p>

HIGHLY CONFIDENTIAL

Rust, Marcus - Vol. II

March 6, 2014

24 (Pages 461 to 464)

<p style="text-align: right;">461</p> <p>1 Q. Now, over on the next page, bullet</p> <p>2 point number three, it says, "backfilling should</p> <p>3 have stopped by now"?</p> <p>4 A. Yeah.</p> <p>5 Q. See that. So even though you</p> <p>6 believed the backfilling ban was a supply</p> <p>7 restriction, Rose Acre complied with that</p> <p>8 requirement; is that correct, sir?</p> <p>9 MR. BARNES: Object to the form.</p> <p>10 THE WITNESS: State your question,</p> <p>11 please.</p> <p>12 MR. STUEVE: Read it back for him,</p> <p>13 please.</p> <p>14 (The record was read as</p> <p>15 requested.)</p> <p>16 MR. BARNES: Same objection.</p> <p>17 THE WITNESS: Yes.</p> <p>18 BY MR. STUEVE:</p> <p>19 Q. Now, if you would, if you could</p> <p>20 turn to Exhibit 111. Why don't you give that to</p> <p>21 me. It will be quicker for me to find it.</p> <p>22 MR. BARNES: That's his own stack.</p>	<p style="text-align: right;">463</p> <p>1 BY MR. STUEVE:</p> <p>2 Q. All right. And it says down here,</p> <p>3 I want to direct your attention to, it's the</p> <p>4 fourth paragraph under hatch report on that</p> <p>5 first page. It starts with some felt?</p> <p>6 A. Yes. I'm down there. Okay.</p> <p>7 Q. It says, "some felt that ACC</p> <p>8 companies," that's certified companies; right,</p> <p>9 that's what's being referred to there?</p> <p>10 A. Yes.</p> <p>11 Q. "Animal care certified companies</p> <p>12 should speed up the phasing schedule for cage</p> <p>13 space, while others said we should not change</p> <p>14 the ACC schedule purely for economic reasons."</p> <p>15 Do you see that?</p> <p>16 A. Yes.</p> <p>17 Q. Do you remember that discussion</p> <p>18 occurring?</p> <p>19 A. Yes. I was very vocal in being</p> <p>20 anti move up.</p> <p>21 Q. And those who were pushing the</p> <p>22 move up of the phase in they wanted to do that</p>
<p style="text-align: right;">462</p> <p>1 MR. STUEVE: I'm sorry.</p> <p>2 MR. BARNES: Do you have 111?</p> <p>3 MR. MONICA: 111 is the left pile.</p> <p>4 MR. BARNES: Good thinking.</p> <p>5 BY MR. STUEVE:</p> <p>6 Q. Let me show you what we've</p> <p>7 previously referred to as Exhibit 111 and these</p> <p>8 are the minutes of June 2005 of the Marketing</p> <p>9 Committee that you attended; is that correct?</p> <p>10 MR. BARNES: Counsel, will you</p> <p>11 stop a second until we find the exhibit you're</p> <p>12 talking about. Give us a minute to catch up if</p> <p>13 you would, please.</p> <p>14 MR. STUEVE: Sure. You got it.</p> <p>15 MR. BARNES: I got it.</p> <p>16 MR. STUEVE: I'm just asking him</p> <p>17 to confirm that the June 1, 2005 Marketing</p> <p>18 Committee minutes and he attended that meeting.</p> <p>19 MR. BARNES: If he recalls. Okay.</p> <p>20 Yeah.</p> <p>21 THE WITNESS: It says I was.</p> <p>22 Yeah.</p>	<p style="text-align: right;">464</p> <p>1 because by increasing the cage space requirement</p> <p>2 that would further reduce flock size and</p> <p>3 hopefully boost prices; correct?</p> <p>4 MR. BARNES: Objection. Calls for</p> <p>5 speculation.</p> <p>6 THE WITNESS: Restate your</p> <p>7 question.</p> <p>8 MR. STUEVE: Go ahead and read it</p> <p>9 back to him.</p> <p>10 (The record was read as</p> <p>11 requested.)</p> <p>12 MR. BARNES: Same objection.</p> <p>13 THE WITNESS: I have no idea what</p> <p>14 their individual thoughts were on them.</p> <p>15 BY MR. STUEVE:</p> <p>16 Q. Well, you remember, though, that</p> <p>17 discussion occurring at the Marketing Committee;</p> <p>18 right?</p> <p>19 A. Yes.</p> <p>20 Q. All right. And --</p> <p>21 A. And I was against the move up.</p> <p>22 Q. Right. But the folks that were</p>

HIGHLY CONFIDENTIAL

Rust, Marcus - Vol. II

March 6, 2014

25 (Pages 465 to 468)

<p style="text-align: right;">465</p> <p>1 for it, they were arguing for it because by</p> <p>2 speeding up the implementation of the cage space</p> <p>3 that would further reduce the flock size and</p> <p>4 boost prices. That's why they were proposing</p> <p>5 it; right?</p> <p>6 A. I have no idea what their</p> <p>7 individual company's reasonings were one way or</p> <p>8 another or against it.</p> <p>9 Q. You do recall that discussion</p> <p>10 occurring at the Marketing Committee; right?</p> <p>11 A. Yes.</p> <p>12 Q. All right.</p> <p>13 MR. BARNES: This was a conference</p> <p>14 call, not a meeting, according to the document.</p> <p>15 (Rust Exhibit Number 545 was</p> <p>16 marked for identification.)</p> <p>17 MR. STUEVE: Let me show you</p> <p>18 what's been marked Rust Exhibit 545, Bates range</p> <p>19 RA 0071690 through 74.</p> <p>20 And can you confirm that this is</p> <p>21 -- indicates the results of an audit?</p> <p>22 THE WITNESS: That's what it</p>	<p style="text-align: right;">467</p> <p>1 Farms?</p> <p>2 A. Yes, but it was not our facility.</p> <p>3 MR. BARNES: It says name of</p> <p>4 facility, Pat, Rice, at the very top right next</p> <p>5 to what you're reading.</p> <p>6 BY MR. STUEVE:</p> <p>7 Q. Okay. So when you say name of</p> <p>8 facility Rice, it says name of company Rose Acre</p> <p>9 Farms. This facility, what is the Rice</p> <p>10 facility?</p> <p>11 A. That's a contract farm in Georgia</p> <p>12 that we terminated.</p> <p>13 Q. Under the UEP certified program,</p> <p>14 though, any of the facilities that you either</p> <p>15 owned or purchased eggs from had to comply with</p> <p>16 the certified program; is that right?</p> <p>17 A. Correct.</p> <p>18 Q. All right. And this -- that's why</p> <p>19 under the company for the name of the audit it's</p> <p>20 Rose Acre Farms; right?</p> <p>21 A. That's -- yes. That's Rose Acre</p> <p>22 Farms.</p>
<p style="text-align: right;">466</p> <p>1 appears to be.</p> <p>2 BY MR. STUEVE:</p> <p>3 Q. In August of 2005; is that right?</p> <p>4 A. That's what it appears to be.</p> <p>5 Yes.</p> <p>6 Q. And it indicates that on items</p> <p>7 eight and nine, if you look down the first page,</p> <p>8 number eight, "our concentrations of ammonia</p> <p>9 within the cage area of the layer house</p> <p>10 monitored and the points received were zero;" is</p> <p>11 that correct?</p> <p>12 A. Yes. That's what it says.</p> <p>13 Q. And would this -- does this audit</p> <p>14 apply to all of your various production</p> <p>15 facilities?</p> <p>16 A. Repeat the question again.</p> <p>17 Q. Yeah. This says cage layers,</p> <p>18 audit checklist.</p> <p>19 Was this audit an audit of all of</p> <p>20 your 15 or so production facilities?</p> <p>21 A. This was not our facility.</p> <p>22 Q. It says name of company, Rose Acre</p>	<p style="text-align: right;">468</p> <p>1 Q. And it -- in essence one of the</p> <p>2 facilities under its control, Rose Acre Farms'</p> <p>3 control, the concentration of ammonia within the</p> <p>4 cage area of the layer house monitored they got</p> <p>5 zero; correct?</p> <p>6 MR. BARNES: Objection to the form</p> <p>7 of the question.</p> <p>8 THE WITNESS: It was a contract</p> <p>9 farm. In a contract farm we give them</p> <p>10 guidelines, but we have no way of monitoring or</p> <p>11 measuring what they do on a daily basis.</p> <p>12 BY MR. STUEVE:</p> <p>13 Q. This contract farm for Rose Acre</p> <p>14 did not meet the requirements set forth in item</p> <p>15 number eight; is that correct?</p> <p>16 A. Correct.</p> <p>17 Q. And number nine was corrective</p> <p>18 action taken when ammonia levels exceeded</p> <p>19 50 parts per million. That was also a zero; is</p> <p>20 that correct?</p> <p>21 A. Well, it says they weren't</p> <p>22 monitored, so it doesn't say if they was over or</p>

HIGHLY CONFIDENTIAL

Rust, Marcus - Vol. II

March 6, 2014

26 (Pages 469 to 472)

<p style="text-align: right;">469</p> <p>1 under.</p> <p>2 Q. Well, on number nine it says</p> <p>3 corrective action taken when ammonia levels</p> <p>4 exceeded 50 parts per million, it says zero;</p> <p>5 right?</p> <p>6 A. I don't see where it says the</p> <p>7 ammonia level exceeded 50 parts.</p> <p>8 Q. I'm just reading the words there.</p> <p>9 Number nine, if you could, it says was</p> <p>10 corrective action taken when ammonia levels</p> <p>11 exceed 50 parts per million and under that</p> <p>12 category the points received were zero?</p> <p>13 A. Got a zero with a slash through</p> <p>14 it. I have no idea what that means other than</p> <p>15 zero. I don't see any place where it says the</p> <p>16 ammonia was over 50 parts per million. It says</p> <p>17 it wasn't monitored.</p> <p>18 Q. Sir, I'm just asking you to</p> <p>19 confirm what the document says and it says under</p> <p>20 item number nine, was corrective action taken</p> <p>21 when ammonia levels exceed 50 parts per million.</p> <p>22 That's what it says; right?</p>	<p style="text-align: right;">471</p> <p>1 requirement; is it not?</p> <p>2 A. It is a requirement. Yes.</p> <p>3 Q. The requirement is was corrective</p> <p>4 action taken when ammonia levels exceed 50 parts</p> <p>5 per million. That's a requirement; right?</p> <p>6 A. I have no idea.</p> <p>7 Q. And you can confirm --</p> <p>8 A. I can confirm the document says</p> <p>9 there's a circle with a slash that you can read</p> <p>10 and see too.</p> <p>11 Q. Does that mean anything other to</p> <p>12 you than zero?</p> <p>13 A. When I put a zero down I don't put</p> <p>14 a slash through it. I don't know if that means</p> <p>15 it doesn't matter. I don't know what it means</p> <p>16 when you put a slash through a zero.</p> <p>17 Q. Over on the right hand column of</p> <p>18 the possible 110 points there's 100; right, over</p> <p>19 in the right hand column?</p> <p>20 A. Yes.</p> <p>21 Q. So that would be confirmation that</p> <p>22 eight and nine would have been zeros; right,</p>
<p style="text-align: right;">470</p> <p>1 A. I sincerely doubt -- this audit</p> <p>2 was done August 30, 2005. That's summertime in</p> <p>3 Georgia. Every fan in that farm would have been</p> <p>4 on. There would not have been an ammonia level</p> <p>5 in the house at that point in time.</p> <p>6 Q. Sir, I'm going to read back the</p> <p>7 question. I'm going to give you one more chance</p> <p>8 to answer it.</p> <p>9 (The record was read as</p> <p>10 requested.)</p> <p>11 MR. BARNES: Object to the form of</p> <p>12 the question. The document speaks for itself.</p> <p>13 THE WITNESS: It doesn't say</p> <p>14 ammonia levels exceeded 50 parts per million.</p> <p>15 BY MR. STUEVE:</p> <p>16 Q. That's not my question.</p> <p>17 A. You asked the question that was</p> <p>18 corrective action taken when it exceeded. It</p> <p>19 doesn't show it exceeded 50 parts per million.</p> <p>20 It wouldn't have in August.</p> <p>21 Q. Sir, on number nine on this audit</p> <p>22 can you confirm item number nine, that's a</p>	<p style="text-align: right;">472</p> <p>1 sir?</p> <p>2 A. Correct.</p> <p>3 Q. Now, you volunteered that you</p> <p>4 fired this contractor; is that right?</p> <p>5 A. We stopped all contracts in</p> <p>6 Georgia.</p> <p>7 Q. When did you fire that contractor?</p> <p>8 A. I don't recall the date. The</p> <p>9 records will show.</p> <p>10 Q. Was it in 2005?</p> <p>11 A. I said I do not recall the date.</p> <p>12 Q. Well, could it have been in 2006?</p> <p>13 MR. BARNES: Objection.</p> <p>14 THE WITNESS: It could have been</p> <p>15 any time. I don't recall the date.</p> <p>16 BY MR. STUEVE:</p> <p>17 Q. I want to be clear. Are you</p> <p>18 saying you fired the contractor because of these</p> <p>19 audit results?</p> <p>20 MR. BARNES: Object to the form of</p> <p>21 the question.</p> <p>22 THE WITNESS: We terminated the</p>

HIGHLY CONFIDENTIAL

Rust, Marcus - Vol. II

March 6, 2014

27 (Pages 473 to 476)

<p style="text-align: right;">473</p> <p>1 contract.</p> <p>2 BY MR. STUEVE:</p> <p>3 Q. Did you terminate the contractor</p> <p>4 as a result of these audit results?</p> <p>5 A. I have no idea.</p> <p>6 Q. Now, if you would, if you could</p> <p>7 turn to Bates range RA -- it's 700, the last</p> <p>8 three digits are 700.</p> <p>9 A. Okay.</p> <p>10 MR. BARNES: 700. Okay.</p> <p>11 BY MR. STUEVE:</p> <p>12 Q. See up there under number of</p> <p>13 layers observed, the first two rows says 25 and</p> <p>14 25? Do you see that in the first column 43, 16</p> <p>15 by 20, 320 by 4?</p> <p>16 A. Right.</p> <p>17 Q. It has number of layers observed.</p> <p>18 Do you see that?</p> <p>19 A. Yes.</p> <p>20 Q. Now, if you do the math, sir, that</p> <p>21 would mean that there was only 45.7-square inch</p> <p>22 per layer for those cage columns; correct, sir?</p>	<p style="text-align: right;">475</p> <p>1 allowed to have more in some cages than other</p> <p>2 cages because of the different sizes. I don't</p> <p>3 know. I'm not an expert which cages had which</p> <p>4 dimensions that they allowed the averaging.</p> <p>5 Q. With respect to those cages,</p> <p>6 though, those cages would not have been in</p> <p>7 compliance with the cage space requirement?</p> <p>8 A. With respect -- I'm not sure.</p> <p>9 MR. BARNES: Object to the form of</p> <p>10 the question.</p> <p>11 MR. STUEVE: I object to counsel</p> <p>12 interrupting the witness's answer to prevent him</p> <p>13 from answering it.</p> <p>14 BY MR. STUEVE:</p> <p>15 Q. Sir, can you confirm for me that</p> <p>16 if your math is correct that those cages would</p> <p>17 not be in compliance with cage space</p> <p>18 requirements?</p> <p>19 A. They use an averaging and it says</p> <p>20 at the bottom 60.2 is average.</p> <p>21 Q. But I'm asking you, though, with</p> <p>22 respect to those cages they would not be in</p>
<p style="text-align: right;">474</p> <p>1 MR. BARNES: Object to the form of</p> <p>2 the question.</p> <p>3 THE WITNESS: I'm not sure what</p> <p>4 you're referring to.</p> <p>5 BY MR. STUEVE:</p> <p>6 Q. You've got total cage floor space</p> <p>7 square inches 320; right, see that?</p> <p>8 A. Yes.</p> <p>9 MR. BARNES: Times four.</p> <p>10 BY MR. STUEVE:</p> <p>11 Q. Times four. You see where it says</p> <p>12 25 layers observed?</p> <p>13 A. Yeah.</p> <p>14 Q. That would be seven hens per cage;</p> <p>15 right?</p> <p>16 A. Get a calculator and do it here.</p> <p>17 It says number of layers, that</p> <p>18 would be 51.2 if I've done my math right.</p> <p>19 Q. That would not be in compliance</p> <p>20 with the cage space requirements; correct, sir?</p> <p>21 A. They had an average -- it could</p> <p>22 have been. They had an averaging. You was</p>	<p style="text-align: right;">476</p> <p>1 compliance with cage space requirements;</p> <p>2 correct?</p> <p>3 MR. BARNES: Objection.</p> <p>4 THE WITNESS: I'm not asking how</p> <p>5 they do adjusting.</p> <p>6 BY MR. STUEVE:</p> <p>7 Q. I'm not asking you to adjust for</p> <p>8 averaging.</p> <p>9 A. If that entire house was done that</p> <p>10 space requirement that you're stating in line</p> <p>11 one, it would not be in compliance.</p> <p>12 Q. Sir, if you would, if you could</p> <p>13 turn to Bates range 97, the last two digits, so</p> <p>14 it's earlier in the document?</p> <p>15 A. Which one?</p> <p>16 Q. The last two digits are 97. I</p> <p>17 don't need your calculator, I don't think.</p> <p>18 A. Which number?</p> <p>19 Q. The last two digits are 97?</p> <p>20 A. 97?</p> <p>21 Q. Uh-huh.</p> <p>22 A. Okay.</p>

HIGHLY CONFIDENTIAL

Rust, Marcus - Vol. II

March 6, 2014

28 (Pages 477 to 480)

<p style="text-align: right;">477</p> <p>1 Q. Now, this is Rose Acre Farms</p> <p>2 again; right?</p> <p>3 A. Yes.</p> <p>4 Q. It says name of facility, Little</p> <p>5 Number 1 and Number 2?</p> <p>6 A. Contract farms.</p> <p>7 Q. And where was that contract farm?</p> <p>8 A. In Georgia.</p> <p>9 Q. And under number eight it says,</p> <p>10 "our concentrations of ammonia in the cage area</p> <p>11 of the layer house monitored five points and</p> <p>12 they got zero;" is that correct?</p> <p>13 A. From memory I'm not sure any of</p> <p>14 the contract farms monitored ammonia.</p> <p>15 Q. That would be a violation of one</p> <p>16 of the requirements of the guidelines; correct,</p> <p>17 sir?</p> <p>18 A. It's not a violation of the</p> <p>19 guideline. It's something they don't receive</p> <p>20 points for.</p> <p>21 Q. Well, you understood that it was a</p> <p>22 requirement of the guidelines to monitor</p>	<p style="text-align: right;">479</p> <p>1 levels exceeded 50 parts per million. There was</p> <p>2 zero points for that, as well; right?</p> <p>3 A. That's what it says.</p> <p>4 Q. Now, we noticed up the deposition</p> <p>5 of KY Hendrix, but he's not available; right?</p> <p>6 A. He's somewhere in the ocean.</p> <p>7 Q. Do you have the ability to get a</p> <p>8 hold of him?</p> <p>9 A. No. He's not in cell phone</p> <p>10 contact. I don't think they've got cell phones</p> <p>11 out there where they sail.</p> <p>12 Q. Well, they eventually have to come</p> <p>13 to shore; right, to get food and water?</p> <p>14 A. Eventually.</p> <p>15 Q. When is he expected to come back</p> <p>16 to shore?</p> <p>17 A. Quite honestly, I don't know. I</p> <p>18 know he had to call AAA once and they had to</p> <p>19 rescue him because he ran out of gas. I didn't</p> <p>20 know they did that; did you, sailboat?</p> <p>21 Q. That would give me a little bit</p> <p>22 more confidence to try sailing if I knew AAA</p>
<p style="text-align: right;">478</p> <p>1 ammonia; correct?</p> <p>2 A. My understanding of the animal</p> <p>3 welfare guidelines, everyone had this point</p> <p>4 system. You got so many points to work towards.</p> <p>5 There were certain things you could allocate</p> <p>6 yourself for say I'm not doing this part or this</p> <p>7 part and still qualify.</p> <p>8 Q. Which parts did Rose Acre decide</p> <p>9 they were not going to comply with?</p> <p>10 A. You would have to ask KY that</p> <p>11 question. I'm not sure.</p> <p>12 Q. You're the corporate rep with</p> <p>13 respect to the UEP certified program. I'm</p> <p>14 asking you which of those did Rose Acre decide</p> <p>15 not to comply with?</p> <p>16 A. I would have to look at the</p> <p>17 documents. We have 200 or 300 chicken houses.</p> <p>18 Some houses are older than others. You can't</p> <p>19 meet certain requirements on certain houses and</p> <p>20 certain houses you can.</p> <p>21 Q. And then the next under number</p> <p>22 nine was corrective action taken when ammonia</p>	<p style="text-align: right;">480</p> <p>1 would come out.</p> <p>2 A. I agree with you. I would never</p> <p>3 get in a sailboat. I have no idea where he is</p> <p>4 today, sir.</p> <p>5 Q. I understand that. You do</p> <p>6 understand he has to come to shore at some</p> <p>7 point; right?</p> <p>8 A. I think it's like -- I never seen</p> <p>9 it. I saw some pictures. It looks like 30,</p> <p>10 40 feet long sailboat. Nothing I would sail</p> <p>11 around the world in. I wouldn't sail around the</p> <p>12 world in a giant sailboat, let alone a little</p> <p>13 one.</p> <p>14 MR. BARNES: Are you done with</p> <p>15 that, Pat?</p> <p>16 MR. STUEVE: I've got one more on</p> <p>17 707.</p> <p>18 MR. BARNES: 707, Marcus. Turn to</p> <p>19 707.</p> <p>20 BY MR. STUEVE:</p> <p>21 Q. This is Rose Acre Farms' audit,</p> <p>22 again, this one was September 2005; is that</p>

HIGHLY CONFIDENTIAL

Rust, Marcus - Vol. II

March 6, 2014

29 (Pages 481 to 484)

<p style="text-align: right;">481</p> <p>1 right?</p> <p>2 A. Yes.</p> <p>3 Q. It identifies the name of the</p> <p>4 facility Lincoln County?</p> <p>5 A. Yes.</p> <p>6 Q. Was that a contract farm?</p> <p>7 A. No.</p> <p>8 Q. That was one of the facilities</p> <p>9 owned and operated?</p> <p>10 A. That's a Rose Acre owned facility.</p> <p>11 Q. Okay. Look at number 11 there?</p> <p>12 A. Uh-huh.</p> <p>13 Q. It says, "are dead or injured</p> <p>14 layers removed from cages daily." Do you see</p> <p>15 that?</p> <p>16 A. Yes.</p> <p>17 Q. And your facility got a zero; is</p> <p>18 that correct?</p> <p>19 A. Evidently. Yes. That's what it</p> <p>20 says.</p> <p>21 Q. That was one of the things that</p> <p>22 was depicted in this videotape; right, was a</p>	<p style="text-align: right;">483</p> <p>1 chicken; is that correct, sir?</p> <p>2 MR. BARNES: Object to the form of</p> <p>3 the question. Misstates --</p> <p>4 THE WITNESS: The person who took</p> <p>5 the video was also the person whose job was</p> <p>6 supposed to pull that dead chicken.</p> <p>7 BY MR. STUEVE:</p> <p>8 Q. Sir, if you could just answer my</p> <p>9 question.</p> <p>10 MR. BARNES: Object to the form of</p> <p>11 the question.</p> <p>12 THE WITNESS: I think I answered</p> <p>13 it.</p> <p>14 MR. STUEVE: Read it back and ask</p> <p>15 you to answer it for me.</p> <p>16 (The record was read as</p> <p>17 requested.)</p> <p>18 MR. BARNES: Object to the form.</p> <p>19 We don't know what video counsel is talking</p> <p>20 about. I'm not sure the witness knows. I</p> <p>21 certainly don't know.</p> <p>22 THE WITNESS: I would have to see</p>
<p style="text-align: right;">482</p> <p>1 dead chicken that hadn't been removed; is that</p> <p>2 right?</p> <p>3 MR. BARNES: Object to the form of</p> <p>4 the question. Vague and indefinite.</p> <p>5 BY MR. STUEVE:</p> <p>6 Q. Do you understand my question?</p> <p>7 A. Repeat the question.</p> <p>8 MR. STUEVE: Yeah.</p> <p>9 (The record was read as</p> <p>10 requested.)</p> <p>11 MR. BARNES: Same objection.</p> <p>12 THE WITNESS: Yes. I think, but</p> <p>13 we're not sure it was ours. What happens</p> <p>14 whenever you have dead chickens, if you turn</p> <p>15 when you're walking by and you miss one you miss</p> <p>16 one. If the auditor finds one that was missed</p> <p>17 they write it down and you lose your points for</p> <p>18 that. Humans make mistakes.</p> <p>19 BY MR. STUEVE:</p> <p>20 Q. Sir, my question, though, was one</p> <p>21 of the things in the videotape concerning your</p> <p>22 facility was the failure to remove a dead</p>	<p style="text-align: right;">484</p> <p>1 the video to verify that.</p> <p>2 BY MR. STUEVE:</p> <p>3 Q. That's your recollection; correct?</p> <p>4 A. My recollection was there was</p> <p>5 things made in a video statement and our people</p> <p>6 stated that the actual video of what was stated</p> <p>7 was something that took place in somebody else's</p> <p>8 chicken house, it wasn't ours. And that's why</p> <p>9 they invited the news media to come out and see</p> <p>10 the video in that house.</p> <p>11 MR. STUEVE: Move to strike the</p> <p>12 answer as nonresponsive.</p> <p>13 MR. BARNES: That's totally</p> <p>14 responsive, counsel.</p> <p>15 BY MR. STUEVE:</p> <p>16 Q. My question is, do you recall that</p> <p>17 one of the topics in the video that you referred</p> <p>18 to yesterday was the failure to remove a dead</p> <p>19 chicken?</p> <p>20 MR. BARNES: Object to the form of</p> <p>21 the question. It's misleading. He testified</p> <p>22 that the video was Jerry mannered, it was</p>

HIGHLY CONFIDENTIAL

Rust, Marcus - Vol. II

March 6, 2014

30 (Pages 485 to 488)

<p style="text-align: right;">485</p> <p>1 rigged.</p> <p>2 THE WITNESS: Whose chicken house</p> <p>3 are you referring to?</p> <p>4 MR. STUEVE: I'm going to instruct</p> <p>5 counsel to stop coaching the witness. You've</p> <p>6 been doing it several times this morning. I ask</p> <p>7 you stop doing it. You can make your objection</p> <p>8 to form. I'm going to ask the witness the</p> <p>9 question one more time and ask you to answer it.</p> <p>10 MR. BARNES: You can instruct me</p> <p>11 all you want. I'm going to instruct you not to</p> <p>12 continue to misstate the witness's prior</p> <p>13 testimony and distort the record of this</p> <p>14 deposition. Go ahead, ask the question again.</p> <p>15 Marcus, please answer the question subject to my</p> <p>16 objection.</p> <p>17 (The record was read as</p> <p>18 requested.)</p> <p>19 THE WITNESS: Which video and</p> <p>20 which hen house are you referring to?</p> <p>21 BY MR. STUEVE:</p> <p>22 Q. Sir, if you would, if you could</p>	<p style="text-align: right;">487</p> <p>1 THE WITNESS: Oh. It's a new</p> <p>2 exhibit.</p> <p>3 MR. BARNES: Put that up there.</p> <p>4 322?</p> <p>5 MR. HICKEY: Previously marked.</p> <p>6 BY MR. STUEVE:</p> <p>7 Q. I'll show you what's previously</p> <p>8 been marked as 322. Sir, if you look at -- this</p> <p>9 is a communication from Gene Gregory to you</p> <p>10 entitled subject Program Review. Do you see</p> <p>11 that?</p> <p>12 A. Yes.</p> <p>13 MR. BARNES: It's to a lot of</p> <p>14 people.</p> <p>15 BY MR. STUEVE:</p> <p>16 Q. And it says, "as I had time to</p> <p>17 reflect upon the Board motion in Seattle that</p> <p>18 now requires us at the January Board meeting to</p> <p>19 have an open discussion of UEP's animal welfare,</p> <p>20 UEP's certified program. It causes me to expect</p> <p>21 the debate of the 100 percent rule once again to</p> <p>22 come up." Do you know what he's referring to</p>
<p style="text-align: right;">486</p> <p>1 turn to 08 in this document, the next page.</p> <p>2 This is, again, concerning an audit of one of</p> <p>3 Rose Acre's facilities.</p> <p>4 Item number five it says, "if so</p> <p>5 was weight loss and mortality monitored daily."</p> <p>6 Do you see that? Zero points?</p> <p>7 A. Yes.</p> <p>8 Q. And this was what KY was</p> <p>9 complaining about in the document we saw</p> <p>10 earlier; right?</p> <p>11 A. I'm not sure what he was actually</p> <p>12 referring to there.</p> <p>13 Q. Now, despite the failure to comply</p> <p>14 with two of those requirements, because of the</p> <p>15 point system Rose Acre did not fail the audit;</p> <p>16 right?</p> <p>17 A. My understanding we didn't -- I</p> <p>18 don't see anything that says we failed an audit</p> <p>19 there.</p> <p>20 Q. Let's turn to 322.</p> <p>21 A. That in here?</p> <p>22 MR. HICKEY: New exhibit.</p>	<p style="text-align: right;">488</p> <p>1 there as the 100 percent rule?</p> <p>2 A. Not 100 percent for sure which</p> <p>3 one.</p> <p>4 Q. What is your understanding of the</p> <p>5 100 percent rule?</p> <p>6 A. Read through the rest of this.</p> <p>7 I'm not 100 percent sure what he's talking</p> <p>8 about. Can I read it?</p> <p>9 Q. Yes.</p> <p>10 A. Okay.</p> <p>11 Q. What is your understand of the</p> <p>12 100 percent rule, sir?</p> <p>13 A. If you owned chickens that you was</p> <p>14 going to keep all your chickens under the animal</p> <p>15 welfare program.</p> <p>16 Q. So this is different from the</p> <p>17 prohibition of purchasing the requirement to</p> <p>18 only purchase eggs that are certified; right?</p> <p>19 A. Correct.</p> <p>20 Q. All right. And when was this --</p> <p>21 the 100 percent rule implemented?</p> <p>22 A. After it come to light there were</p>

HIGHLY CONFIDENTIAL

Rust, Marcus - Vol. II

March 6, 2014

31 (Pages 489 to 492)

<p style="text-align: right;">489</p> <p>1 several people having birds both ways.</p> <p>2 Q. And were you in favor of the</p> <p>3 100 percent rule?</p> <p>4 A. Yes.</p> <p>5 Q. All right. Now, that 100 percent</p> <p>6 rule would preclude your largest competitor in</p> <p>7 the egg production -- the egg processing market,</p> <p>8 which is Michael Foods, from being an UEP</p> <p>9 certified company; correct?</p> <p>10 A. How are you meaning that?</p> <p>11 Q. Well, Michael Foods, all of the</p> <p>12 eggs that either -- that was under contract or</p> <p>13 owned were not UEP certified facilities; right?</p> <p>14 A. Correct.</p> <p>15 Q. And so under the 100 percent rule</p> <p>16 Michael Foods would be precluded from joining</p> <p>17 the UEP certified program; right?</p> <p>18 A. I don't think so. I think the --</p> <p>19 restate your question. You're confusing me.</p> <p>20 Q. As I understand it, the</p> <p>21 100 percent rule was that any flock that's</p> <p>22 either owned or under contract or under control</p>	<p style="text-align: right;">491</p> <p>1 Q. So you voted for the 100 percent</p> <p>2 rule when it was initially proposed; right?</p> <p>3 A. I believe I did.</p> <p>4 Q. And then when Michael Foods, a</p> <p>5 principal competitor of yours, sought an</p> <p>6 exception to that 100 percent rule you voted</p> <p>7 against it; right?</p> <p>8 A. Against them or against the rule?</p> <p>9 Q. Against them joining under that</p> <p>10 exception; right?</p> <p>11 A. I could have.</p> <p>12 Q. Now, if you will look under item</p> <p>13 number six, it says in that second sentence of</p> <p>14 number six it says, "keep in mind that the audit</p> <p>15 score sheet was set up on a point system whereby</p> <p>16 nothing at this time other than the space is</p> <p>17 cause for immediate failure." Did I read that</p> <p>18 correctly?</p> <p>19 A. You read that. That's what it</p> <p>20 says.</p> <p>21 Q. That's consistent with your</p> <p>22 recollection you testified earlier; right?</p>
<p style="text-align: right;">490</p> <p>1 that you use for your business had to be in</p> <p>2 compliance with UEP certified program; correct?</p> <p>3 A. Yes.</p> <p>4 Q. That rule would preclude a company</p> <p>5 like Michael Foods from becoming UEP certified;</p> <p>6 right?</p> <p>7 A. It was to my knowledge -- I don't</p> <p>8 think it was implemented that way.</p> <p>9 Q. There was an exception made for</p> <p>10 Michael Foods; right?</p> <p>11 A. Yes.</p> <p>12 Q. You voted against that exception;</p> <p>13 correct?</p> <p>14 A. I could have. Yes.</p> <p>15 Q. And the reason why is that you did</p> <p>16 not want your principal competitor to be UEP</p> <p>17 certified; right?</p> <p>18 A. I didn't want them to be able to</p> <p>19 come in and go write a contract with another</p> <p>20 producer to come in and sell eggs to our -- the</p> <p>21 customers we had that -- with less cost</p> <p>22 production.</p>	<p style="text-align: right;">492</p> <p>1 A. Yes.</p> <p>2 Q. All right.</p> <p>3 (Rust Exhibit Number 546 was</p> <p>4 marked for identification.)</p> <p>5 BY MR. STUEVE:</p> <p>6 Q. I'll show you what's been marked</p> <p>7 Exhibit 546 RAUPDATE 34892.</p> <p>8 This is an e-mail from Greg Hinton</p> <p>9 of Rose Acre; right?</p> <p>10 A. Yes.</p> <p>11 Q. Who was on the Marketing Committee</p> <p>12 in '06; right?</p> <p>13 A. Correct.</p> <p>14 Q. To KY Hendrix, who would have been</p> <p>15 on the Animal Welfare Committee; right?</p> <p>16 A. Yes.</p> <p>17 Q. It says, "KY, I think that your</p> <p>18 committee should make a motion that no certified</p> <p>19 producer can process noncertified eggs, shell or</p> <p>20 liquid, in their plant." Did I read that</p> <p>21 correctly?</p> <p>22 A. Yes.</p>

HIGHLY CONFIDENTIAL

Rust, Marcus - Vol. II

March 6, 2014

32 (Pages 493 to 496)

<p style="text-align: right;">493</p> <p>1 Q. That is the 100 percent rule, as</p> <p>2 you understand it; right?</p> <p>3 A. Yes.</p> <p>4 Q. And that appears to have been an</p> <p>5 idea that Greg Hinton was proposing, of your</p> <p>6 company; right?</p> <p>7 A. Yes.</p> <p>8 Q. And that it was ultimately</p> <p>9 adopted; correct, by UEP?</p> <p>10 A. Restate the question.</p> <p>11 Q. The 100 percent rule was adopted</p> <p>12 by UEP; correct?</p> <p>13 A. To own birds I think. Yes.</p> <p>14 Q. In fact, you wanted that rule to</p> <p>15 apply to Michael Foods, but UEP made an</p> <p>16 exception to the 100 percent rule; right?</p> <p>17 A. Correct.</p> <p>18 MR. STUEVE: Why don't we take</p> <p>19 just a quick break here.</p> <p>20 MR. BARNES: Sure. That's fine.</p> <p>21 THE VIDEOGRAPHER: Off the record</p> <p>22 at 11:45 a.m.</p>	<p style="text-align: right;">495</p> <p>1 ready.</p> <p>2 A. Okay.</p> <p>3 Q. I just have a general question.</p> <p>4 Was this your communication back and forth with</p> <p>5 Gene Gregory?</p> <p>6 A. Yes.</p> <p>7 Q. Concerning your opposition to</p> <p>8 making an exception to the 100 percent rule for</p> <p>9 Michael Foods?</p> <p>10 A. Could have been. Yes.</p> <p>11 Q. And there were -- we've already</p> <p>12 talked about, up to now, there's the 100 percent</p> <p>13 rule that was adopted that we talked about, as</p> <p>14 well as the policy not for UEP certified</p> <p>15 companies not to be purchasing noncertified eggs</p> <p>16 for their purposes; correct, sir?</p> <p>17 MR. BARNES: Object to form.</p> <p>18 THE WITNESS: Restate the</p> <p>19 question.</p> <p>20 MR. STUEVE: Can you read it back</p> <p>21 for me, please.</p> <p>22 (The record was read as</p>
<p style="text-align: right;">494</p> <p>1 (A brief recess was taken.)</p> <p>2 THE VIDEOGRAPHER: This -- back on</p> <p>3 the record at 11:53 a.m.</p> <p>4 BY MR. STUEVE:</p> <p>5 Q. I'm going to show you what's been</p> <p>6 marked Exhibit 547, it's RAUUPDATE 0035814</p> <p>7 through 16.</p> <p>8 (Rust Exhibit Number 547 was</p> <p>9 marked for identification.)</p> <p>10 BY MR. STUEVE:</p> <p>11 Q. Do you remember reviewing this</p> <p>12 document in preparation for your deposition</p> <p>13 today?</p> <p>14 A. Yes. Vaguely. Yeah.</p> <p>15 Q. Okay. And is this the</p> <p>16 communication back and forth between you and</p> <p>17 Gene Gregory concerning exceptions that were</p> <p>18 being contemplated being made for the 100</p> <p>19 percent rule for Michael Foods?</p> <p>20 A. I need to read it before I can</p> <p>21 answer that --</p> <p>22 Q. Okay. You let me know when you're</p>	<p style="text-align: right;">496</p> <p>1 requested.)</p> <p>2 MR. STUEVE: Let me rephrase it.</p> <p>3 THE WITNESS: It's hard to answer.</p> <p>4 BY MR. STUEVE:</p> <p>5 Q. The first question that we talked</p> <p>6 about the 100 percent rule; correct?</p> <p>7 A. Yes.</p> <p>8 Q. We also talked about the agreement</p> <p>9 that UEP certified companies would not purchase</p> <p>10 noncertified eggs for their uses; correct, sir?</p> <p>11 MS. LEVINE: Objection to the form</p> <p>12 of the question. Lack of foundation.</p> <p>13 THE WITNESS: Restate it again.</p> <p>14 BY MR. STUEVE:</p> <p>15 Q. The -- we talked about the</p> <p>16 100 percent rule?</p> <p>17 A. Right.</p> <p>18 Q. We also talked about the agreement</p> <p>19 that UEP certified companies would not purchase</p> <p>20 noncertified eggs for their uses; correct, sir?</p> <p>21 MS. LEVINE: Object to the form of</p> <p>22 the question. Lack of foundation.</p>

HIGHLY CONFIDENTIAL

Rust, Marcus - Vol. II

March 6, 2014

33 (Pages 497 to 500)

<p style="text-align: right;">497</p> <p>1 THE WITNESS: She confuses me.</p> <p>2 BY MR. STUEVE:</p> <p>3 Q. Just answer my question.</p> <p>4 A. Well, my attention span is not</p> <p>5 good enough. You have to excuse me on that.</p> <p>6 MR. STUEVE: Your objection is</p> <p>7 noted, Jan.</p> <p>8 MS. LEVINE: I'm going to have a</p> <p>9 continuing objection that that was an UEP rule</p> <p>10 or ever was. That was my basis. If you want to</p> <p>11 change the question that's fine, but that's the</p> <p>12 continuing objection.</p> <p>13 MR. STUEVE: Read back my</p> <p>14 question, please.</p> <p>15 (The record was read as</p> <p>16 requested.)</p> <p>17 THE WITNESS: I don't think so.</p> <p>18 BY MR. STUEVE:</p> <p>19 Q. You don't remember looking at the</p> <p>20 earlier documents concerning that policy?</p> <p>21 A. I remember looking at earlier</p> <p>22 documents, but not in that context the way</p>	<p style="text-align: right;">499</p> <p>1 suggestion and then you're saying 100 percent.</p> <p>2 BY MR. STUEVE:</p> <p>3 Q. Let's look down here at the bottom</p> <p>4 of the page here. Gene Gregory states the last</p> <p>5 sentence here, "we are fortunate" -- on the</p> <p>6 first page, right at the bottom the very last</p> <p>7 sentence. Are you there where it says, "we are</p> <p>8 fortunate."</p> <p>9 A. Yeah.</p> <p>10 Q. It says, "we are fortunate that</p> <p>11 most UEP certified companies have already made a</p> <p>12 company policy to not purchase any noncertified</p> <p>13 eggs." Do you see that?</p> <p>14 A. Yes.</p> <p>15 Q. That was a policy of Rose Acre;</p> <p>16 was it not?</p> <p>17 A. Yes and no.</p> <p>18 Q. Okay. Did you try to comply with</p> <p>19 that policy?</p> <p>20 A. We tried, but there's times we</p> <p>21 weren't able to.</p> <p>22 Q. You were aware other UEP certified</p>
<p style="text-align: right;">498</p> <p>1 you're saying that.</p> <p>2 Q. Well, when you became UEP</p> <p>3 certified did you stop purchasing noncertified</p> <p>4 eggs for your facilities?</p> <p>5 A. I think we have always bought</p> <p>6 some, but not very many.</p> <p>7 Q. And you understood that UEP</p> <p>8 companies that were UEP certified had agreed to</p> <p>9 not purchase noncertified eggs; correct?</p> <p>10 MS. LEVINE: Objection.</p> <p>11 THE WITNESS: Restate your</p> <p>12 question.</p> <p>13 MR. STUEVE: Can you read it back</p> <p>14 for me.</p> <p>15 (The record was read as</p> <p>16 requested.)</p> <p>17 THE WITNESS: I'm having</p> <p>18 difficulty.</p> <p>19 MS. LEVINE: Objection.</p> <p>20 THE WITNESS: I don't recall</p> <p>21 exactly what -- I read this one document and it</p> <p>22 says in there it says 95 percent or made some</p>	<p style="text-align: right;">500</p> <p>1 companies had committed to that same policy;</p> <p>2 correct, sir?</p> <p>3 MS. LEVINE: Objection.</p> <p>4 THE WITNESS: I'm not aware of</p> <p>5 what they committed. I think some did.</p> <p>6 BY MR. STUEVE:</p> <p>7 Q. Well, in fact, Gene Gregory was</p> <p>8 confirming that to you in his communication to</p> <p>9 you; right?</p> <p>10 MS. LEVINE: Objection.</p> <p>11 THE WITNESS: Yes.</p> <p>12 BY MR. STUEVE:</p> <p>13 Q. Now, let me show you -- your</p> <p>14 efforts to prevent Michael Foods from getting an</p> <p>15 exception to the 100 percent rule was not</p> <p>16 adopted; correct?</p> <p>17 A. Correct.</p> <p>18 Q. And they were allowed to join the</p> <p>19 UEP certified program under a phase-in program;</p> <p>20 correct?</p> <p>21 A. Correct.</p> <p>22 Q. All right. And even under a</p>

HIGHLY CONFIDENTIAL

Rust, Marcus - Vol. II

March 6, 2014

34 (Pages 501 to 504)

<p style="text-align: right;">501</p> <p>1 phase-in program, because they were such a large 2 company, that would require that all of the eggs 3 that they eventually purchased to be UEP 4 certified; right?</p> <p>5 A. What are you referring to with 6 right?</p> <p>7 Q. So you understood that the 8 phase-in for Michael Foods was that over a 9 period of years they ultimately would have to 10 get in compliance with the 100 percent rule, 11 which is all the eggs they purchased or produced 12 had to be UEP certified; right?</p> <p>13 MS. LEVINE: Objection.</p> <p>14 THE WITNESS: I hate to ask this 15 again, but I can't remember the first part of 16 the question that you just --</p> <p>17 MR. STUEVE: Why don't you read 18 back the question.</p> <p>19 (The record was read as 20 requested.)</p> <p>21 MS. LEVINE: Objection.</p> <p>22 THE WITNESS: I don't think that's</p>	<p style="text-align: right;">503</p> <p>1 would have an immediate effect on the price of 2 the eggs. I don't know what you're -- I don't 3 understand what you're asking there.</p> <p>4 BY MR. STUEVE:</p> <p>5 Q. Let me show you a document that 6 you prepared at the time.</p> <p>7 A. Okay.</p> <p>8 Q. Rust 548, RAUPDATE 0034691. 9 (Rust Exhibit Number 548 was 10 marked for identification.)</p> <p>11 BY MR. STUEVE:</p> <p>12 Q. Do you see here the e-mail is the 13 middle from you to Brad Ginnane. Who is Brad 14 Ginnane?</p> <p>15 A. He's our dried egg product sales 16 manager.</p> <p>17 Q. It says, "Brad, Michael just 18 announced they're going into the ACC program." 19 That's the UEP certified program; right?</p> <p>20 A. Correct.</p> <p>21 Q. "That alone will cause market to 22 go up. Unsold and unpriced rights will be</p>
<p style="text-align: right;">502</p> <p>1 correct. I don't think that's what took place. 2 I think that's what I may have wished.</p> <p>3 BY MR. STUEVE:</p> <p>4 Q. That's what you wanted; correct?</p> <p>5 A. I wanted all producers to have the 6 100 percent rule, that they didn't go out and 7 endorse -- I wanted everybody to treat all their 8 chickens the same, animal welfare. That's what 9 we were in the program for, animal welfare.</p> <p>10 BY MR. STUEVE:</p> <p>11 Q. Well, that included that they had 12 to comply with the cage space requirements; 13 right?</p> <p>14 A. Yes.</p> <p>15 Q. Now, you knew that when Michael 16 Foods joined the UEP certified program that 17 because of the cage space requirements that 18 would have an immediate boost in the price of 19 eggs; correct?</p> <p>20 MR. BARNES: Object to the form of 21 that question.</p> <p>22 THE WITNESS: I don't know how it</p>	<p style="text-align: right;">504</p> <p>1 excellent property." Do you see that?</p> <p>2 A. Yes.</p> <p>3 Q. And the reason why you believed 4 egg prices would immediately jump was because in 5 order for them to comply with the cage case 6 requirements that would reduce the egg supply 7 and boost the prices; correct, sir?</p> <p>8 A. No.</p> <p>9 Q. What are you referring to there?</p> <p>10 A. Egg whites is something you dried 11 and produce over the summer months, you buy at 12 low prices.</p> <p>13 Q. Uh-huh.</p> <p>14 A. Over the summer months you can 15 store egg whites for up to a year, year and a 16 half and even longer, I think. And egg whites 17 eventually when the ACC program, if you look at 18 the step down effect, was going into the fall of 19 the year, the egg white powder will go up. It's 20 not immediate. It's going to be five to 21 six months from now.</p> <p>22 Q. Right. But what you were saying</p>

HIGHLY CONFIDENTIAL

Rust, Marcus - Vol. II

March 6, 2014

35 (Pages 505 to 508)

<p style="text-align: right;">505</p> <p>1 was that because they were joining the ACC 2 program, which had the cage space requirements 3 that they now had to comply with, that that 4 would result in higher prices; correct, sir? 5 MR. BARNES: Objection to form. 6 THE WITNESS: If you look right 7 here it says he replied back -- that's what I 8 thought, but he replied back and said the 9 inventory went up 5 percent in May, which means 10 more powder -- 11 BY MR. STUEVE: 12 Q. No. You got the e-mail string 13 wrong. He wrote you first, then you wrote. 14 What you were saying in there is that because 15 Michael Foods was joining the certified program 16 with its cage space requirements, that would 17 cause the market to go up; correct? 18 MR. BARNES: Objection to form. 19 THE WITNESS: What I printed there 20 is what I felt at the time, I guess. 21 (Rust Exhibit Number 549 was 22 marked for identification.)</p>	<p style="text-align: right;">507</p> <p>1 early kills;" right? 2 MR. BARNES: Object to form. 3 THE WITNESS: Let me read this. 4 I state in here, "the shell egg 5 industry can not go into retreat with flock 6 reductions, early molts, and early sales. This 7 only raises the shell egg industry's actual cost 8 of production, which then increases the 9 opportunities for the low cost in line liquid 10 providers. By creating an artificial high shell 11 egg market it enhances their costs -- their sale 12 of the cost plus as a reason to enter into a 13 contract for a cost plus." 14 BY MR. STUEVE: 15 Q. So when you're saying by creating 16 an artificial high shell egg market, you're 17 referring to the implementation by UEP of the 18 flock reduction, early molts and early kill 19 programs that we've seen; correct, sir? 20 A. I don't think. So what I'm saying 21 there -- let me think here. I've got to 22 remember the context and what I wrote it. You</p>
<p style="text-align: right;">506</p> <p>1 BY MR. STUEVE: 2 Q. Show you what's been marked as 3 Exhibit 549. It's RAUPDATE 0039139. 4 It's Exhibit 549; is that right, 5 sir? 6 A. Yes. 7 Q. If you would the bottom half, I've 8 got a question for you. 9 A. Let me read it. 10 Q. Okay. 11 A. Okay. 12 Q. Do you see in that e-mail there 13 from you to Gene Gregory you use the term 14 "artificially high shell egg market"? It says, 15 "creating a artificial high shell egg market." 16 Third sentence? 17 A. Yes. 18 Q. All right. And what you mean by, 19 "creating a artificial high shell egg market, 20 that's the result of the supply management 21 programs implemented by UEP, specifically flock 22 reductions, early molts, and early sales or</p>	<p style="text-align: right;">508</p> <p>1 have to understand, I was always against the 2 early molts, the flock reductions and the early 3 sales and that's what I stated. 4 Q. The reason why you were against 5 those is because it created an artificially high 6 shell egg market; correct, sir? 7 A. On the large. 8 Q. Talking about large eggs? 9 A. Well, what happens is when people 10 start -- 11 Q. Would you answer my question? Are 12 you talking about large eggs when you say the 13 large? 14 A. Consumers want to buy large eggs. 15 All recipes call for large. When you're 16 producing shell eggs you end up with the large 17 egg always sells at a premium to all the other 18 sizes of eggs. 19 Q. What you were communicating to 20 Gene is that you believed that the flock 21 reductions, early molts and early kills that 22 were coordinated by UEP created an artificially</p>

HIGHLY CONFIDENTIAL

Rust, Marcus - Vol. II

March 6, 2014

36 (Pages 509 to 512)

<p style="text-align: right;">509</p> <p>1 high shell egg market; correct, sir?</p> <p>2 A. I was saying the shell egg</p> <p>3 industry could not go into retreat.</p> <p>4 Q. Right. What I'm saying, though,</p> <p>5 is what was creating an artificially high shell</p> <p>6 egg market was the flock reductions, early</p> <p>7 molts, and early kills coordinated by the UEP;</p> <p>8 correct, sir?</p> <p>9 MR. BARNES: Object to the form.</p> <p>10 THE WITNESS: You're adding words</p> <p>11 into it. That's not in there, what I stated.</p> <p>12 BY MR. STUEVE:</p> <p>13 Q. I'm just asking you to confirm</p> <p>14 what you were communicating to Gene Gregory?</p> <p>15 A. What I wrote there is what I</p> <p>16 wrote.</p> <p>17 Q. And what you believed was that</p> <p>18 UEP's efforts to coordinate flock reductions,</p> <p>19 early molts, and early kills resulted in</p> <p>20 artificially high shell egg market; correct,</p> <p>21 sir?</p> <p>22 MR. BARNES: Object to form.</p>	<p style="text-align: right;">511</p> <p>1 AFTERNOON SESSION</p> <p>2 (1:23 p.m.)</p> <p>3 THE VIDEOGRAPHER: This is the</p> <p>4 combining of videotape number three. Back on</p> <p>5 the record at 1:23 p.m.</p> <p>6 MR. STUEVE: Okay. We are back on</p> <p>7 the record.</p> <p>8 BY MR. STUEVE:</p> <p>9 Q. I put in front of you a bent</p> <p>10 computer, which is mine. What we would what</p> <p>11 we've done and we will mark it as an exhibit,</p> <p>12 but we have found, I believe, the video that you</p> <p>13 were referring to in yesterday's testimony.</p> <p>14 Could you hit play?</p> <p>15 MR. BARNES: Let's see what we've</p> <p>16 got here. We want to see the video.</p> <p>17 BY MR. STUEVE:</p> <p>18 Q. That's fine. What I'm saying is</p> <p>19 you can see it at an angle.</p> <p>20 MR. BARNES: Go ahead.</p> <p>21 You've got to see it.</p> <p>22 BY MR. STUEVE:</p>
<p style="text-align: right;">510</p> <p>1 That's not what it says.</p> <p>2 THE WITNESS: What I was stating</p> <p>3 there, when they go into those retreats it</p> <p>4 raises the shell egg industry's actual cost.</p> <p>5 When you raise the actual cost the price is</p> <p>6 going to go up because you've raised the cost.</p> <p>7 It don't mean your profits are going up.</p> <p>8 BY MR. STUEVE:</p> <p>9 Q. And you believed that increase in</p> <p>10 price was artificial; correct?</p> <p>11 A. Somewhat.</p> <p>12 MR. STUEVE: This is a good</p> <p>13 breaking point right here.</p> <p>14 MR. BARNES: Fine.</p> <p>15 THE VIDEOGRAPHER: This is the end</p> <p>16 of videotape number two. Off the record at</p> <p>17 12:17 p.m.</p> <p>18 (Whereupon, at 12:17 p.m., a lunch</p> <p>19 recess was taken.)</p> <p>20</p> <p>21</p> <p>22</p>	<p style="text-align: right;">512</p> <p>1 Q. Are you ready? Can you hit play?</p> <p>2 A. Yeah. Is there supposed to be</p> <p>3 noise?</p> <p>4 MR. BARNES: There's no sound.</p> <p>5 MR. HICKEY: There should be</p> <p>6 sound.</p> <p>7 MR. STUEVE: Okay. Maybe the</p> <p>8 volume -- okay. Maybe it's muted on here. Here</p> <p>9 we go. Okay. So let's go back. Ready. Now</p> <p>10 let's try it with sound.</p> <p>11 (Video being played for the</p> <p>12 witness.)</p> <p>13 MR. BARNES: Back on the record.</p> <p>14 Mr. Stueve has just shown the witness on his</p> <p>15 computer a video.</p> <p>16 MR. STUEVE: Hold on. I haven't</p> <p>17 asked him a question yet.</p> <p>18 MR. BARNES: It doesn't matter.</p> <p>19 I'm objecting to the use of the video on</p> <p>20 numerous grounds.</p> <p>21 MR. STUEVE: Let me ask him a</p> <p>22 question about it, then you can object to my</p>

HIGHLY CONFIDENTIAL

Rust, Marcus - Vol. II

March 6, 2014

37 (Pages 513 to 516)

<p style="text-align: right;">513</p> <p>1 question.</p> <p>2 MR. BARNES: Well, I'm objecting</p> <p>3 to not only your question.</p> <p>4 MR. STUEVE: Once you get your</p> <p>5 objection out I'm going to ask him a question.</p> <p>6 You can have a continuing objection to it. I</p> <p>7 don't want you to restate your objection again.</p> <p>8 MR. BARNES: I would like the</p> <p>9 record to reflect a continuing objection with</p> <p>10 the agreement of counsel to any further use or</p> <p>11 interrogation of this witness or any other</p> <p>12 witness by use of this video. There are</p> <p>13 numerous documented instances where videos of</p> <p>14 this nature were staged, were put on by animal</p> <p>15 rights activists and are not accurate. There</p> <p>16 have been documented instances where egg farmers</p> <p>17 and other producers have been subject to these</p> <p>18 false representations and false videos by</p> <p>19 various radical animal rights groups.</p> <p>20 Until this video is authenticated</p> <p>21 and is shown to have anything to do with the</p> <p>22 operations of my client, Rose Acre Farms, I'm</p>	<p style="text-align: right;">515</p> <p>1 BY MR. STUEVE:</p> <p>2 Q. Was a portion of what appeared on</p> <p>3 the news channel appear in this Human Society</p> <p>4 video?</p> <p>5 A. A portion appeared from what I</p> <p>6 recollect --</p> <p>7 MR. STUEVE: And I just want to</p> <p>8 mark for the record, can you confirm Exhibit 550</p> <p>9 is the flash drive that we had plugged into the</p> <p>10 computer you were watching?</p> <p>11 THE WITNESS: Yes. I recognize</p> <p>12 the water system on there that was not ours in</p> <p>13 the laying hen cages, that's how I was able to</p> <p>14 recognize it was not ours.</p> <p>15 BY MR. STUEVE:</p> <p>16 Q. I'm asking you, the question has</p> <p>17 to do with 550. Can you confirm that this flash</p> <p>18 drive was in the computer and that's what</p> <p>19 contained the Humane Society video that we</p> <p>20 played for you?</p> <p>21 A. It contains the video of what I</p> <p>22 refer to as the water system that was not our</p>
<p style="text-align: right;">514</p> <p>1 going to object to its use or introduction in</p> <p>2 this case.</p> <p>3 Mr. Stueve, you can go ahead and</p> <p>4 ask your questions.</p> <p>5 (Rust Exhibit Number 550 was</p> <p>6 marked for identification.)</p> <p>7 BY MR. STUEVE:</p> <p>8 Q. Thank you.</p> <p>9 Mr. Rust, you did just witness the</p> <p>10 video that was prepared by the Humane Society;</p> <p>11 is that correct?</p> <p>12 A. Yes.</p> <p>13 Q. And was that the video that you</p> <p>14 were referring to in your earlier deposition</p> <p>15 testimony?</p> <p>16 A. I'm not sure about that.</p> <p>17 Q. Does it appear to be?</p> <p>18 MR. BARNES: Object to the form.</p> <p>19 Asked and answered.</p> <p>20 THE WITNESS: The video that I was</p> <p>21 referring to was the one that was showed on the</p> <p>22 news channel at night and it wasn't that long.</p>	<p style="text-align: right;">516</p> <p>1 system.</p> <p>2 Q. That's not my question. You just</p> <p>3 saw a videotape; is that correct?</p> <p>4 A. I just saw a videotape of a system</p> <p>5 that was not ours.</p> <p>6 Q. Sir, if you'll answer my question.</p> <p>7 I'm not asking you about whether or not any</p> <p>8 portion of that was your facility or not. What</p> <p>9 I'm asking you is you saw a Humane Society</p> <p>10 videotape; is that correct?</p> <p>11 A. It is not of our facility.</p> <p>12 MR. STUEVE: Sir, I'm going to</p> <p>13 note for the record the witness has not answered</p> <p>14 my question. This is taking a significant</p> <p>15 amount of my time in two days. If I don't get</p> <p>16 done with my deposition today I reserve the</p> <p>17 right to go back to the court and ask for more</p> <p>18 time.</p> <p>19 I'm going to ask you one more</p> <p>20 time. I'm trying to lay foundation for what's</p> <p>21 on this flash driver. Can you confirm for me</p> <p>22 that we just showed a videotape that started off</p>

HIGHLY CONFIDENTIAL

Rust, Marcus - Vol. II

March 6, 2014

38 (Pages 517 to 520)

<p style="text-align: right;">517</p> <p>1 with Humane Society; is that correct, sir?</p> <p>2 THE WITNESS: Yes.</p> <p>3 BY MR. STUEVE:</p> <p>4 Q. And that came from, as far as you</p> <p>5 could tell, a flash drive that was plugged into</p> <p>6 a computer that was in front of you; is that</p> <p>7 correct?</p> <p>8 A. Correct.</p> <p>9 Q. And that flash drive is marked as</p> <p>10 Exhibit 550; is that correct?</p> <p>11 A. Correct.</p> <p>12 MR. BARNES: I'm making a further</p> <p>13 objection. You cut the witnesses off -- cut the</p> <p>14 witness's answer off, Mr. Stueve, when he tried</p> <p>15 to tell you that the situation depicted in that</p> <p>16 video was not a picture of any Rose Acre Farm</p> <p>17 operation. You cut him off. I think he's</p> <p>18 entitled to state that for the record. I have</p> <p>19 think the jury is entitled to know that. I know</p> <p>20 you don't want to deceive the jury.</p> <p>21 (Rust Exhibit Number 551 was</p> <p>22 marked for identification.)</p>	<p style="text-align: right;">519</p> <p>1 question back, please.</p> <p>2 (The record was read as</p> <p>3 requested.)</p> <p>4 THE WITNESS: No.</p> <p>5 MR. BARNES: Move to strike the</p> <p>6 document.</p> <p>7 (Rust Exhibit Number 552 was</p> <p>8 marked for identification.)</p> <p>9 BY MR. STUEVE:</p> <p>10 Q. Show you what's been marked as</p> <p>11 Exhibit 552 -- I'm sorry. Can you give me that</p> <p>12 document back, please? I gave you a highlighted</p> <p>13 version and I want a clean version in front of</p> <p>14 you.</p> <p>15 MR. BARNES: Is this still 552?</p> <p>16 MR. STUEVE: Yes. It's still 552.</p> <p>17 BY MR. STUEVE:</p> <p>18 Q. Let me show you what's marked 552,</p> <p>19 it's an article that appeared in the Agra News</p> <p>20 dated March 15, 2013. Do you remember reviewing</p> <p>21 this video -- or this article?</p> <p>22 MS. LEVINE: Could we get the</p>
<p style="text-align: right;">518</p> <p>1 BY MR. STUEVE:</p> <p>2 Q. Sir, if you could identify what's</p> <p>3 been marked as Exhibit 551 for me. There's no</p> <p>4 Bates range on this.</p> <p>5 A. Yes.</p> <p>6 Q. Have you seen this document</p> <p>7 before?</p> <p>8 MR. BARNES: Counsel, could you</p> <p>9 identify the source of this document? It does</p> <p>10 not appear to have been produced in this case.</p> <p>11 MR. STUEVE: Can you read the</p> <p>12 question --</p> <p>13 MR. BARNES: Did you hear my</p> <p>14 request?</p> <p>15 MR. STUEVE: I'm not going to</p> <p>16 answer that.</p> <p>17 MR. BARNES: You're not going to</p> <p>18 tell us where this document came from?</p> <p>19 MR. STUEVE: No.</p> <p>20 MR. BARNES: Then I object to any</p> <p>21 further use of the document.</p> <p>22 MR. STUEVE: Can you read my</p>	<p style="text-align: right;">520</p> <p>1 Bates number?</p> <p>2 MR. STUEVE: There is no Bates</p> <p>3 number.</p> <p>4 MR. MONICA: Counsel, you are</p> <p>5 presenting him documents your side has not</p> <p>6 produced. We would request you give us all</p> <p>7 documents we previously asked for. For the last</p> <p>8 three years we've asked for documents and you</p> <p>9 have not produced them. Now you're taking them</p> <p>10 and sticking them in front of the witness</p> <p>11 without producing them in this case.</p> <p>12 BY MR. STUEVE:</p> <p>13 Q. Mr. Rust, have you seen this</p> <p>14 article before?</p> <p>15 A. I'm still reading it.</p> <p>16 Q. Okay.</p> <p>17 MR. BARNES: I object to this</p> <p>18 document on the basis of authenticity.</p> <p>19 MR. STUEVE: Remember, counsel,</p> <p>20 you reserved all your objections besides form.</p> <p>21 MR. BARNES: I just want to make</p> <p>22 sure I don't forget this one.</p>

HIGHLY CONFIDENTIAL

Rust, Marcus - Vol. II

March 6, 2014

39 (Pages 521 to 524)

<p style="text-align: right;">521</p> <p>1 Counsel, do you have any more</p> <p>2 documents you're going to use that you did not</p> <p>3 produce in this litigation in accordance with</p> <p>4 the rules applicable to discovery in the State</p> <p>5 of Kansas? Do you have any more of those you</p> <p>6 haven't produced that are in the files and</p> <p>7 records of your client?</p> <p>8 BY MR. STUEVE:</p> <p>9 Q. Sir, are you familiar with that</p> <p>10 article?</p> <p>11 A. No.</p> <p>12 Q. Okay. If you would, on the first</p> <p>13 page about halfway down it has the paragraph</p> <p>14 that starts with the video. It says, "the</p> <p>15 video, a few minutes long, clip edited according</p> <p>16 to Joe Miller, general counsel for Rose Acre</p> <p>17 Farms, from six hours of tape shot at two</p> <p>18 separate Iowa egg facilities was released in</p> <p>19 April 2010, months after Carlson worked at the</p> <p>20 Winterset farm. He worked there a total of</p> <p>21 13 days in February of 2010."</p> <p>22 Did you see that in the article?</p>	<p style="text-align: right;">523</p> <p>1 general counsel for Rose Acre Farms statement</p> <p>2 was that there was six hours of tape shot?</p> <p>3 MR. BARNES: Objection to the form</p> <p>4 of the question. Speculation. Assumes fact not</p> <p>5 in evidence.</p> <p>6 BY MR. STUEVE:</p> <p>7 Q. I'm sorry. Your counsel was</p> <p>8 objecting.</p> <p>9 A. I have no idea.</p> <p>10 Q. Do you remember talking with your</p> <p>11 general counsel about six hours of tape shot at</p> <p>12 two facilities?</p> <p>13 A. Could have. I have no</p> <p>14 recollection of it.</p> <p>15 Q. This article appeared last year in</p> <p>16 March of 2013; right?</p> <p>17 A. That's what it says here.</p> <p>18 Q. Okay. But you on behalf of Rose</p> <p>19 Acre are not aware of six house of videotape</p> <p>20 that may be in Rose Acre's possession</p> <p>21 concerning -- that was supposedly taken by this</p> <p>22 former employee?</p>
<p style="text-align: right;">522</p> <p>1 A. Yes.</p> <p>2 Q. All right. Were you aware that an</p> <p>3 employee of Rose Acre that worked at their</p> <p>4 Winterset farm had six hours of tape shot at two</p> <p>5 separate Iowa egg facilities?</p> <p>6 MR. BARNES: Object to form.</p> <p>7 THE WITNESS: I only knew what was</p> <p>8 said later.</p> <p>9 BY MR. STUEVE:</p> <p>10 Q. So were you aware that your</p> <p>11 general counsel was quoted in the paper as</p> <p>12 saying that there was some six hours of tape</p> <p>13 shot at two separate Iowa egg facilities?</p> <p>14 MR. BARNES: Objection. Form.</p> <p>15 THE WITNESS: I know it now from</p> <p>16 reading this.</p> <p>17 BY MR. STUEVE:</p> <p>18 Q. Have you seen six hours of</p> <p>19 videotape shot at two --</p> <p>20 A. I have never seen six hours of</p> <p>21 video shot at --</p> <p>22 Q. Do you know what the basis of</p>	<p style="text-align: right;">524</p> <p>1 MR. BARNES: Object to the form.</p> <p>2 THE WITNESS: I have never seen</p> <p>3 it.</p> <p>4 BY MR. STUEVE:</p> <p>5 Q. All right. Now, let's -- that's</p> <p>6 all on that document. Thank you.</p> <p>7 A. Can I talk to counsel here a</p> <p>8 second?</p> <p>9 MR. BARNES: Witness would like to</p> <p>10 consult with counsel, sir. You don't have a</p> <p>11 question pending, so we're going to take a short</p> <p>12 break.</p> <p>13 THE VIDEOGRAPHER: Off the record</p> <p>14 at 1:39 p.m.</p> <p>15 (Counsel confers with the witness</p> <p>16 off the record.)</p> <p>17 THE VIDEOGRAPHER: Back on the</p> <p>18 record at 1:42 p.m.</p> <p>19 BY MR. STUEVE:</p> <p>20 Q. Let me show you what's been marked</p> <p>21 as Exhibit 553.</p> <p>22 (Rust Exhibit Number 553 was</p>

HIGHLY CONFIDENTIAL

Rust, Marcus - Vol. II

March 6, 2014

40 (Pages 525 to 528)

<p style="text-align: right;">525</p> <p>1 marked for identification.)</p> <p>2 BY MR. STUEVE:</p> <p>3 Q. If you look at the bottom of this</p> <p>4 e-mail dated January 17, 2007, it's from Tony</p> <p>5 Wesner to you; correct?</p> <p>6 A. Yes.</p> <p>7 Q. And it's -- he's asking, "why did</p> <p>8 UEP vote in 25 parts per million for the</p> <p>9 certified program." Do you see that?</p> <p>10 A. Yes.</p> <p>11 Q. Do you remember when that was</p> <p>12 approved by UEP?</p> <p>13 A. I don't recollect exactly when it</p> <p>14 took place.</p> <p>15 Q. Does that sound about right,</p> <p>16 though, January 2007?</p> <p>17 A. Could have been.</p> <p>18 Q. Up at the top it says, "we cannot</p> <p>19 meet 25 ppm in our houses." Do you see that?</p> <p>20 A. Correct.</p> <p>21 Q. And is that one of the</p> <p>22 requirements that Rose Acre has determined it</p>	<p style="text-align: right;">527</p> <p>1 Q. That's fine. I'm just going to</p> <p>2 direct you to what I'm going to ask about,</p> <p>3 Mr. Rust, down at that lower on the bottom of</p> <p>4 1474 in that e-mail, about halfway down it says,</p> <p>5 "did you know we reduced the output potential of</p> <p>6 our farms by 25 to 30 percent with the cage</p> <p>7 space increases to try and make a viable</p> <p>8 program."</p> <p>9 A. Let me read this. I'm not sure.</p> <p>10 Q. Okay. Do you see that reference</p> <p>11 there?</p> <p>12 A. Which reference?</p> <p>13 Q. That I just read to you?</p> <p>14 A. I'm still reading.</p> <p>15 Q. It's about halfway down the</p> <p>16 paragraph at the bottom there of the first page.</p> <p>17 A. Let me finish reading it. Okay.</p> <p>18 Now what are you asking.</p> <p>19 Q. About halfway down on the first</p> <p>20 page of the e-mail that's dated June 21, 2011,</p> <p>21 from you it says, "did you know we reduced the</p> <p>22 output potential of our farms by 25 to</p>
<p style="text-align: right;">526</p> <p>1 will not comply with?</p> <p>2 A. During the winter months we cannot</p> <p>3 comply with that at given times at certain</p> <p>4 temperatures.</p> <p>5 Q. And has Moark lost its -- excuse</p> <p>6 me. Has Rose Acre lost its certified status as</p> <p>7 a result of not complying with the ammonia</p> <p>8 requirements?</p> <p>9 A. No.</p> <p>10 Q. What's that? I'm sorry. You're</p> <p>11 right. Thank you, David.</p> <p>12 Show you what's been marked as</p> <p>13 Exhibit 554 and it's RAFK 0001474 through 75.</p> <p>14 (Rust Exhibit Number 554 was</p> <p>15 marked for identification.)</p> <p>16 BY MR. STUEVE:</p> <p>17 Q. I'll just direct your attention to</p> <p>18 what I'm going to ask you about. It's down at</p> <p>19 the bottom.</p> <p>20 MR. BARNES: Excuse me, counsel,</p> <p>21 can you give us a chance to look at the exhibit.</p> <p>22 BY MR. STUEVE:</p>	<p style="text-align: right;">528</p> <p>1 30 percent with the cage space increase." Do</p> <p>2 you see that?</p> <p>3 A. Yes. I see that.</p> <p>4 Q. And that was a statement that you</p> <p>5 made in June of 2011; correct?</p> <p>6 A. That was a question.</p> <p>7 Q. It says -- the question was, "did</p> <p>8 you know we reduced the output potential of our</p> <p>9 farms by 25 to 30 percent with cage space</p> <p>10 increases," that was your statement; right?</p> <p>11 A. At some we did, at some we didn't.</p> <p>12 Q. Sir, if you could just confirm it</p> <p>13 was your statement?</p> <p>14 A. Our records will show what we did.</p> <p>15 Q. Sir, if you can just confirm what</p> <p>16 you put in your e-mail in June 21st of 2011 you</p> <p>17 stated, "we reduced the output potential of our</p> <p>18 farms by 25 to 30 percent with the cage space</p> <p>19 increase." That's what you said; correct?</p> <p>20 A. Yeah, but we increased our bird</p> <p>21 numbers every year, sir.</p> <p>22 Q. That's not my question. I'm going</p>

HIGHLY CONFIDENTIAL

Rust, Marcus - Vol. II

March 6, 2014

41 (Pages 529 to 532)

<p style="text-align: right;">529</p> <p>1 to ask you to read back my question.</p> <p>2 A. That's what it says, but that's --</p> <p>3 you're taking it out of context again.</p> <p>4 (The record was read as</p> <p>5 requested.)</p> <p>6 MR. BARNES: Objection.</p> <p>7 THE WITNESS: To try and make a</p> <p>8 viable program.</p> <p>9 (Rust Exhibit Number 555 was</p> <p>10 marked for identification.)</p> <p>11 BY MR. STUEVE:</p> <p>12 Q. Show you what's been marked AS</p> <p>13 Rust 555, Bates range RAFKS 0007213.</p> <p>14 I want to direct your attention to</p> <p>15 the last sentence of your -- it's the middle</p> <p>16 e-mail there?</p> <p>17 A. I haven't read it yet. Okay.</p> <p>18 What about it?</p> <p>19 Q. I want to ask you simply about</p> <p>20 your -- first of all, do you recall preparing</p> <p>21 this e-mail?</p> <p>22 A. I don't recall preparing it, but I</p>	<p style="text-align: right;">531</p> <p>1 changing.</p> <p>2 Q. And that's what you were</p> <p>3 reflecting in February 2012 in that e-mail; is</p> <p>4 that correct?</p> <p>5 A. Yes.</p> <p>6 (Rust Exhibit Number 556 was</p> <p>7 marked for identification.)</p> <p>8 BY MR. STUEVE:</p> <p>9 Q. Show you what's been marked 556,</p> <p>10 it's RAFKS 0009116 through 919.</p> <p>11 I just have a question about the</p> <p>12 first paragraph there.</p> <p>13 A. This is marked highly</p> <p>14 confidential.</p> <p>15 Q. It's actually produced by your</p> <p>16 company.</p> <p>17 A. Okay. That means I can.</p> <p>18 MR. BARNES: Correct.</p> <p>19 BY MR. STUEVE:</p> <p>20 Q. In the first paragraph --</p> <p>21 A. I'm still reading, sir.</p> <p>22 Q. Have you finished the first</p>
<p style="text-align: right;">530</p> <p>1 remember having wrote it after reading it.</p> <p>2 Q. Okay. And if you would, I direct</p> <p>3 your attention to the last sentence of your</p> <p>4 February 15, 2012 e-mail timed at 4:21 p.m., so</p> <p>5 it's in the middle of the document. The last</p> <p>6 sentence there that says, "if you ask consumers</p> <p>7 today which egg they prefer, one-third to</p> <p>8 two-thirds will say cage free, but 90 percent of</p> <p>9 them will buy the cheaper." Do you see that?</p> <p>10 A. Correct.</p> <p>11 Q. Now, was that based on your</p> <p>12 experience?</p> <p>13 A. Correct and it's still the</p> <p>14 national experience.</p> <p>15 Q. That consumers are still sensitive</p> <p>16 to price?</p> <p>17 A. When you go and look at something</p> <p>18 you usually buy what's cheaper if you think it's</p> <p>19 the same thing.</p> <p>20 Q. And that's been your experience</p> <p>21 with respect to eggs; is that right?</p> <p>22 A. For the most part, but it's been</p>	<p style="text-align: right;">532</p> <p>1 paragraph, because that's what my question is</p> <p>2 about?</p> <p>3 A. No.</p> <p>4 MR. BARNES: Mr. Stueve, the</p> <p>5 witness is entitled to look at the entire</p> <p>6 document if he wants to, I would assume.</p> <p>7 THE WITNESS: I got to start over</p> <p>8 now.</p> <p>9 BY MR. STUEVE:</p> <p>10 Q. That's fine. Take your time.</p> <p>11 We're not going to get done with your depo and</p> <p>12 I'll go back to the court.</p> <p>13 A. Okay. I read the paragraph.</p> <p>14 Q. It says, the title is Rose Acre</p> <p>15 Farms Versus Competition With Issues?</p> <p>16 A. Yes.</p> <p>17 Q. Do you see that?</p> <p>18 A. Yes.</p> <p>19 Q. Who prepared this?</p> <p>20 A. I did.</p> <p>21 Q. All right. It says -- by the way,</p> <p>22 do you remember when you prepared it?</p>

HIGHLY CONFIDENTIAL

Rust, Marcus - Vol. II

March 6, 2014

42 (Pages 533 to 536)

<p style="text-align: right;">533</p> <p>1 A. Not exactly. Sometime after the 2 warning letters. 3 Q. Okay. And it says, "today in the 4 egg industry we have two types of producers, 5 those with warning letters those without." Did 6 I read that correctly? 7 A. Yes. 8 Q. And those with warning letters 9 would include Rose Acre; is that right? 10 A. Correct. 11 Q. Who else were you aware of that 12 had warning letters? 13 A. Sparboe, DeCoster, Forsman Farms, 14 I think Midwest Poultry. Probably a dozen. I 15 can't rattle off who they were. 16 Q. And how did you become aware that 17 your competitors also had warning letters? 18 A. There's an FDA registry that they 19 post the letters. 20 Q. Okay. It says, "our level of SE," 21 is that salmonella? 22 A. Yes.</p>	<p style="text-align: right;">535</p> <p>1 A. Yes. 2 Q. So you were anticipating that once 3 the FDA was in full force and have all their 4 budgets in place that you may very well get 5 another warning letter; is that correct. 6 MR. BARNES: Object to the form. 7 THE WITNESS: Anything is 8 possible. 9 BY MR. STUEVE: 10 Q. "This means that they will be back 11 and in full force once they have all their 12 budgets in place. We are in the Midwest market 13 area with the most discounts before the SE rule 14 and the most displaced eggs since the Sparboe, 15 White County and -- warning letters." Did I 16 read that correctly? 17 A. Yes. 18 Q. It says, "we were identified as 19 having the worst rodent control issues." What 20 were you referring to there as we were 21 identified as having the worst rodent control 22 issues?</p>
<p style="text-align: right;">534</p> <p>1 Q. It says, "our level of salmonella 2 positive has run higher than most of our bigger 3 competitors from the numbers generated by FDA." 4 Did I read that correctly? 5 A. Yes. 6 Q. And what numbers generated by FDA 7 are you referring to? 8 A. One of the meetings, I forget 9 which one, they posted what they found at the 10 given farm levels and our level of incidents was 11 higher than some of the other people's. 12 Q. And you indicated you wrote this 13 document after you had received warning letters 14 from the FDA; is that correct? 15 A. Correct. 16 Q. And how many warning letters had 17 you received? 18 A. Just one. 19 Q. Okay. And but you indicated in 20 here, "this means they will be back and in full 21 force once they have all their budgets in 22 place;" is that correct?</p>	<p style="text-align: right;">536</p> <p>1 A. We had the highest mouse count and 2 the investigator when they come to the farm they 3 took KY's -- KY has instigated a policy that if 4 you have a rodent level above their minimum 5 standard that they would come back in and do a 6 night inspection visit nightly. And that person 7 would take a flashlight and walk up and down the 8 rows of the chicken house and look for rodents 9 and count them. Then they would make a tally 10 sheet up and write how many they counted and 11 then they had to do it the next night, the next 12 night, the next night, the next night. 13 When FDA came in they took the 14 entire tally sheet numbers that the people had 15 wrote down as having seen. Didn't say, you 16 know, it's no idea if they saw the same one the 17 night before or the night after. They took that 18 entire tally sheet, added them up and said 19 that's how many mouse were reported. 20 Q. And when you were referring we 21 were identified as having the worst rodent 22 control issues, where were you identified as</p>

HIGHLY CONFIDENTIAL

Rust, Marcus - Vol. II

March 6, 2014

43 (Pages 537 to 540)

<p style="text-align: right;">537</p> <p>1 having the worst rodent control issues?</p> <p>2 A. At White County.</p> <p>3 Q. Was that on a website? How were</p> <p>4 you identified as having the worst rodent</p> <p>5 control issues?</p> <p>6 A. Let me think. We, if you look at</p> <p>7 all -- FDA when they come in and do a report of</p> <p>8 a farm they have what they call a 483, okay. On</p> <p>9 the 483 form they wrote us down for having a</p> <p>10 higher count than any of the other farms as</p> <p>11 reported, but what they accused us of was hiding</p> <p>12 all the mice because they had six inspectors at</p> <p>13 the farm for five days or six days and they</p> <p>14 observed one of the least mice counts at the</p> <p>15 farm that they had seen. So what had happened,</p> <p>16 their investigators used the report that was</p> <p>17 generated by the mouse control program we had,</p> <p>18 which only identified at night what they saw and</p> <p>19 counted them.</p> <p>20 MR. STUEVE: I move to strike the</p> <p>21 answer as nonresponsive.</p> <p>22 BY MR. STUEVE:</p>	<p style="text-align: right;">539</p> <p>1 amount of mice listed on it.</p> <p>2 Q. Okay. And so -- and, in fact,</p> <p>3 customers found out about this; is that right?</p> <p>4 A. Correct.</p> <p>5 Q. And how did you find out about the</p> <p>6 fact that this did not set well with customers?</p> <p>7 A. We were black listed by a customer</p> <p>8 and taken off the approved supplier list.</p> <p>9 Q. Who was that?</p> <p>10 A. The one that went out of business</p> <p>11 in Chicago, KKR. They went bankrupt or</p> <p>12 something. Shut down.</p> <p>13 Q. Was it a large grocery chain?</p> <p>14 A. A big grocery chain. Dominick's.</p> <p>15 Q. Dominick's. Okay. And you said</p> <p>16 this does not set well with our customers. What</p> <p>17 other customers brought it to your attention?</p> <p>18 A. Multiple QC departments. We had</p> <p>19 several customers that we could not ship eggs to</p> <p>20 them from that facility.</p> <p>21 Q. And what were those customers?</p> <p>22 A. I don't recall offhand which ones</p>
<p style="text-align: right;">538</p> <p>1 Q. What I'm trying to ask you is,</p> <p>2 when we state we were identified as having the</p> <p>3 worst rodent control issues, was that posted on</p> <p>4 an FDA site that customers would have access to?</p> <p>5 A. I identified that by what I had</p> <p>6 read of the other farm's 483s.</p> <p>7 Q. You go on to say, "this has not</p> <p>8 set well with customers." How would customers</p> <p>9 know that Rose Acre had been identified as</p> <p>10 having the worst rodent control issues?</p> <p>11 A. There were no other 483s or</p> <p>12 warning letters that listed the amount of mice</p> <p>13 that had been identified at our farm.</p> <p>14 Q. Sir, how would customers know?</p> <p>15 A. Public record.</p> <p>16 Q. So your customers could go to an</p> <p>17 FDA website?</p> <p>18 A. As far as I know.</p> <p>19 Q. And they would see that you had</p> <p>20 been written up by the FDA?</p> <p>21 A. That warning letter -- it states</p> <p>22 there's no other warning letter that has that</p>	<p style="text-align: right;">540</p> <p>1 it was, but it was Dutch Farms, maybe. There</p> <p>2 were two or three -- four or five. I'm not sure</p> <p>3 how many.</p> <p>4 Q. You say, "we are still on black</p> <p>5 list by some;" correct?</p> <p>6 A. Correct.</p> <p>7 Q. "And we have lost a couple cents</p> <p>8 per dozen in selling price because of warning</p> <p>9 letters given to us here in the Midwest"?</p> <p>10 A. Correct.</p> <p>11 Q. And when you say you've lost a</p> <p>12 couple cents per dozen, how did that happen?</p> <p>13 A. We -- when you have a 1.5 million</p> <p>14 bird farm and the people who -- all those eggs</p> <p>15 at White County were being sold to a company</p> <p>16 called Dutch Farms. Dutch Farms, the day we got</p> <p>17 the notice letter we took all the eggs from that</p> <p>18 farm and hauled them to our Pulaski County</p> <p>19 grading facility and started breaking all those</p> <p>20 and pasturized them so we could not be sued or</p> <p>21 said we were sold adulterated egg products. The</p> <p>22 top of the warning letter states right in there</p>

HIGHLY CONFIDENTIAL

Rust, Marcus - Vol. II

March 6, 2014

44 (Pages 541 to 544)

<p style="text-align: right;">541</p> <p>1 that you are notified that you may be selling</p> <p>2 adulterated food products.</p> <p>3 Q. So that's how you loss cents per</p> <p>4 dozen, because you couldn't sell it to Dutch</p> <p>5 Farms you had to use it in your breaking</p> <p>6 facility?</p> <p>7 A. Had to use it in breaking.</p> <p>8 Q. Now, did this result in you losing</p> <p>9 your UEP certified -- UEP certification status?</p> <p>10 A. At that location?</p> <p>11 Q. Yeah.</p> <p>12 A. No.</p> <p>13 Q. If you could turn to the second</p> <p>14 page of the document at the top. You say, "Rose</p> <p>15 Acre and Sparboe Family Farms are the only top</p> <p>16 ten remaining with warning letters." Do you see</p> <p>17 that?</p> <p>18 A. Yes.</p> <p>19 Q. And what you mean by top ten? Is</p> <p>20 the top ten egg producers?</p> <p>21 A. Yes.</p> <p>22 Q. All right. It says, "-- shipped</p>	<p style="text-align: right;">543</p> <p>1 Q. If you would, could you just</p> <p>2 answer my question. Under the UEP certified egg</p> <p>3 program high-rise houses are not prohibited; is</p> <p>4 that correct, sir?</p> <p>5 A. They don't prohibit any kind of</p> <p>6 housing.</p> <p>7 (Rust Exhibit Number 557 was</p> <p>8 marked for identification.)</p> <p>9 BY MR. STUEVE:</p> <p>10 Q. Show you what's been marked as 557</p> <p>11 and can you confirm for me that that's the</p> <p>12 warning letter from the FDA that you've been</p> <p>13 testifying about?</p> <p>14 A. Yes.</p> <p>15 Q. And would this then be available</p> <p>16 for your customers to review; is that correct?</p> <p>17 A. Correct.</p> <p>18 MR. BARNES: I'm going to make</p> <p>19 another objection here, Mr. Stueve. This is</p> <p>20 another document which you have not previously</p> <p>21 produced to us. It obviously came from your</p> <p>22 files. I just ask if there are any more of</p>
<p style="text-align: right;">542</p> <p>1 eggs he knew were positive. People got sick.</p> <p>2 We will be the number one target of FDA." Did I</p> <p>3 read that correctly?</p> <p>4 A. Yes.</p> <p>5 Q. "Count on it. We are, as they see</p> <p>6 it, big and rich"?</p> <p>7 A. Yes.</p> <p>8 Q. Okay. Then it goes on to say, "we</p> <p>9 have about 85 percent high-rise, which FDA views</p> <p>10 as highest risk." Do you see that?</p> <p>11 A. Yes.</p> <p>12 Q. What did you mean by that?</p> <p>13 A. A high-rise chicken house, FDA</p> <p>14 looks at as the highest risk type of facility</p> <p>15 for salmonella, SE in eggs.</p> <p>16 Q. Yet the UEP certified program did</p> <p>17 not preclude high-rise egg -- chicken houses;</p> <p>18 correct?</p> <p>19 A. You precluded high-rise chicken</p> <p>20 houses at the onset of the program you would</p> <p>21 have eliminated overnight 65 percent of the egg</p> <p>22 production in the United States.</p>	<p style="text-align: right;">544</p> <p>1 these you can give us before this deposition --</p> <p>2 MR. STUEVE: I have to chuckle</p> <p>3 because we had to go to a public site to get</p> <p>4 this warning letter because Rose Acre didn't</p> <p>5 produce it.</p> <p>6 MR. MONICA: You didn't ask for</p> <p>7 it.</p> <p>8 MR. STUEVE: Oh, yes we did.</p> <p>9 MR. MONICA: No. You didn't. Go</p> <p>10 back and look.</p> <p>11 MR. STUEVE: I just want to make</p> <p>12 sure that's your position. The reason why you</p> <p>13 didn't produce the FDA warning letter is because</p> <p>14 we didn't ask for it? Is that your position? I</p> <p>15 believe you just said.</p> <p>16 MR. BARNES: Just go ahead.</p> <p>17 MR. STUEVE: Did I understand you</p> <p>18 right, counsel?</p> <p>19 MR. BARNES: Continue your</p> <p>20 examination, Pat. It's getting late. I'm</p> <p>21 getting tired.</p> <p>22 MR. STUEVE: You started it. I</p>

HIGHLY CONFIDENTIAL

Rust, Marcus - Vol. II

March 6, 2014

45 (Pages 545 to 548)

<p style="text-align: right;">545</p> <p>1 thought I had to respond.</p> <p>2 MR. BARNES: I understand. I</p> <p>3 understand.</p> <p>4 THE WITNESS: This was just</p> <p>5 printed because it's got the closeout letter</p> <p>6 that only come two weeks ago, list at the</p> <p>7 bottom, at the back.</p> <p>8 MR. BARNES: Where is that?</p> <p>9 THE WITNESS: Back page here.</p> <p>10 MR. BARNES: Oh. I see. I see.</p> <p>11 I see.</p> <p>12 (Rust Exhibit Number 558 was</p> <p>13 marked for identification.)</p> <p>14 BY MR. STUEVE:</p> <p>15 Q. Let me show you what's been marked</p> <p>16 as Rust Exhibit 558, RAUPDATE 0039242 through</p> <p>17 44.</p> <p>18 I've got one there. Let me find</p> <p>19 this and I'll give you this other one.</p> <p>20 MR. BARNES: All right.</p> <p>21 THE WITNESS: I need to read all</p> <p>22 this or?</p>	<p style="text-align: right;">547</p> <p>1 Q. And, in fact, participated in USEM</p> <p>2 exports for several years thereafter; correct,</p> <p>3 sir?</p> <p>4 A. What dates did we start</p> <p>5 participating? I think it was December, right</p> <p>6 after this.</p> <p>7 Q. Now, if you would, down at the</p> <p>8 bottom it just -- the first sentence there you</p> <p>9 state, "Gene," down here from Marcus, "Gene,</p> <p>10 something to bounce on your brain and walls, a</p> <p>11 theory I have in surplus removal for shell egg</p> <p>12 industry." Do you see that?</p> <p>13 A. Which page?</p> <p>14 Q. Right on the first page?</p> <p>15 A. Okay.</p> <p>16 Q. First sentence of your e-mail to</p> <p>17 Gene Gregory down below dated October 19, 2006?</p> <p>18 A. Okay.</p> <p>19 Q. It says, "Gene, something to</p> <p>20 bounce on your brain and walls, a theory I have</p> <p>21 in surplus removal for shell egg industry"?</p> <p>22 A. Yeah.</p>
<p style="text-align: right;">546</p> <p>1 BY MR. STUEVE:</p> <p>2 Q. No. I just have some specific</p> <p>3 questions. First, up at the top of the exhibit</p> <p>4 it's an e-mail from you to Gene Gregory. Can</p> <p>5 you read that?</p> <p>6 A. All right. Okay.</p> <p>7 Q. You state in this e-mail about</p> <p>8 halfway through that, "I've always been</p> <p>9 disgusted with USEM efforts to market surplus</p> <p>10 overseas. This has never sat well with some</p> <p>11 folks, nor the producers in the countries that</p> <p>12 we dumped into." Do you see that?</p> <p>13 A. Yes.</p> <p>14 Q. And you're referring to the USEM</p> <p>15 exports; correct, sir?</p> <p>16 A. Correct.</p> <p>17 Q. And this is October 2006; is that</p> <p>18 right?</p> <p>19 A. Yes.</p> <p>20 Q. And you joined USEM in 2006;</p> <p>21 right?</p> <p>22 A. Sometime in that time period.</p>	<p style="text-align: right;">548</p> <p>1 Q. Do you see that? Do you then set</p> <p>2 out your theory there?</p> <p>3 A. Let me read it. Yeah. That was</p> <p>4 my theory.</p> <p>5 Q. Sir, I'm going to show you what's</p> <p>6 been marked as Exhibit 315.</p> <p>7 And this is dated 12/10/03 and</p> <p>8 there's a Capper-Volstead certification. It</p> <p>9 says, "yes, more than 50 percent of all eggs</p> <p>10 handled by our company, including the eggs</p> <p>11 produced, contracted or purchased, are produced</p> <p>12 on farms owned or operated by our company." Do</p> <p>13 you see that?</p> <p>14 A. Yes.</p> <p>15 Q. And who signed that?</p> <p>16 A. I did.</p> <p>17 Q. Okay. Now, you understood that</p> <p>18 that was important in order for UEP to be in</p> <p>19 compliance with Capper-Volstead Act?</p> <p>20 A. You had to sign one of these to be</p> <p>21 a member.</p> <p>22 Q. Okay. Now, Michael Foods was a</p>

HIGHLY CONFIDENTIAL

Rust, Marcus - Vol. II

March 6, 2014

46 (Pages 549 to 552)

<p style="text-align: right;">549</p> <p>1 member of UEP eventually; right?</p> <p>2 A. Yes. I think they already were.</p> <p>3 Q. And you know that 50 percent of</p> <p>4 all the eggs they handled were not produced on</p> <p>5 farms owned or operated by Michael Foods;</p> <p>6 correct?</p> <p>7 MR. BARNES: Object to form.</p> <p>8 THE WITNESS: I have no idea of</p> <p>9 their exact amounts.</p> <p>10 BY MR. STUEVE:</p> <p>11 Q. Were you aware, sir, that -- that</p> <p>12 of the -- that Michael Foods marketed or</p> <p>13 controlled about 40 to 45 million birds and that</p> <p>14 only 13 to 14 of those million of those birds</p> <p>15 were actually owned by Michael Foods?</p> <p>16 A. I was not privy to what they</p> <p>17 owned. I knew they marketed a lot of eggs, but</p> <p>18 I wasn't sure who owned, what kind of contract.</p> <p>19 I had no involvement in any of their business</p> <p>20 relations with their producer.</p> <p>21 Q. Okay. Can you get 547 there?</p> <p>22 A. Okay. I found 547.</p>	<p style="text-align: right;">551</p> <p>1 attempt to pass an amendment with affected Board</p> <p>2 members not there is apprehensive. Michaels and</p> <p>3 Cargill are in the egg business for the money.</p> <p>4 All the rest of the folks there are in it as a</p> <p>5 way of life and to support that we are farmers.</p> <p>6 They are processors who happen to own birds."</p> <p>7 Do you see that?</p> <p>8 A. Yes.</p> <p>9 Q. You're referring to both Michael</p> <p>10 Foods and Cargill; right?</p> <p>11 A. Right.</p> <p>12 Q. It was your view that the bulk of</p> <p>13 their business was to process eggs and they just</p> <p>14 happened to own, as you stated, own some birds;</p> <p>15 right.</p> <p>16 MR. BARNES: Object to form.</p> <p>17 THE WITNESS: They started like</p> <p>18 any of the rest of us did and they just grew and</p> <p>19 grew and grew.</p> <p>20 BY MR. STUEVE:</p> <p>21 Q. You knew, though, that they did</p> <p>22 not own sufficient birds to come close to</p>
<p style="text-align: right;">550</p> <p>1 Q. There you go?</p> <p>2 MR. BARNES: You're a better man</p> <p>3 than I am.</p> <p>4 BY MR. STUEVE:</p> <p>5 Q. If you could, just turn to the 815</p> <p>6 page.</p> <p>7 MR. BARNES: Can I look over his</p> <p>8 shoulder rather than root for my exhibit?</p> <p>9 THE WITNESS: Page 15?</p> <p>10 BY MR. STUEVE:</p> <p>11 Q. 815.</p> <p>12 MR. BARNES: Before you ask him</p> <p>13 questions --</p> <p>14 MR. STUEVE: Can I direct him to</p> <p>15 where I want to ask?</p> <p>16 MR. BARNES: Sure.</p> <p>17 BY MR. STUEVE:</p> <p>18 Q. I won't ask my question. I'll</p> <p>19 direct him from Marcus Rust to Gene Gregory. It</p> <p>20 starts with Gene. Do you see that?</p> <p>21 A. Yeah.</p> <p>22 Q. "So Gene, what took place to</p>	<p style="text-align: right;">552</p> <p>1 supplying the eggs that they were processing and</p> <p>2 selling; fair enough?</p> <p>3 A. I had no business understanding of</p> <p>4 their actual contracts with their producers.</p> <p>5 The only thing I knew was if their producer was</p> <p>6 under contract to them they were not allowed to</p> <p>7 sell to anybody else because they -- somehow</p> <p>8 they was Michael's eggs. At times we tried to</p> <p>9 buy eggs from them, they wouldn't sell them.</p> <p>10 Said they was under contract.</p> <p>11 MR. MONICA: You don't have</p> <p>12 another notebook behind you; do you, Pat?</p> <p>13 MR. BARNES: David's got one under</p> <p>14 the table.</p> <p>15 (Laughter.)</p> <p>16 (Rust Exhibit Number 559 was</p> <p>17 marked for identification.)</p> <p>18 BY MR. STUEVE:</p> <p>19 Q. Show you what's been marked as</p> <p>20 Exhibit 559 and it's UE PRIV 0000069 through 70.</p> <p>21 A. This is marked highly</p> <p>22 confidential.</p>

HIGHLY CONFIDENTIAL

Rust, Marcus - Vol. II

March 6, 2014

47 (Pages 553 to 556)

<p style="text-align: right;">553</p> <p>1 Q. Right. You can look at it.</p> <p>2 MR. BARNES: Jan, are you on?</p> <p>3 MS. LEVINE: Yes. Can we see the</p> <p>4 document? Just one second. We'll pull it up.</p> <p>5 MR. BARNES: The reason I ask it</p> <p>6 says UE PRIV, P-R-I-V.</p> <p>7 MR. MONICA: Marcus, don't look at</p> <p>8 it until they pull it up. It will only take a</p> <p>9 second.</p> <p>10 MR. STUEVE: Jan, I've got to keep</p> <p>11 going here.</p> <p>12 MS. LEVINE: Greg Hinton from Rose</p> <p>13 Acre is on it; is that correct?</p> <p>14 MR. BARNES: Yeah.</p> <p>15 MR. STUEVE: Sir, you can go ahead</p> <p>16 and look at that.</p> <p>17 THE WITNESS: I can?</p> <p>18 MR. STUEVE: Correct.</p> <p>19 MS. LEVINE: What we're going to</p> <p>20 do is we will have Mr. Rust sign Exhibit A and</p> <p>21 this will just be under the protective order</p> <p>22 under Exhibit 11, along with the other</p>	<p style="text-align: right;">555</p> <p>1 MR. BARNES: Well, that's a good</p> <p>2 point.</p> <p>3 MS. LEVINE: I'll check the</p> <p>4 confidentiality order.</p> <p>5 MR. BARNES: Check that, Jan, and</p> <p>6 we'll comply with whatever you have to do.</p> <p>7 MR. STUEVE: Okay.</p> <p>8 MR. BARNES: Go ahead.</p> <p>9 BY MR. STUEVE:</p> <p>10 Q. All right. So if you would, 559,</p> <p>11 Greg, this was minutes from egg products Market</p> <p>12 Committee; is that right?</p> <p>13 A. Yes.</p> <p>14 Q. And Greg Hinton was a member of</p> <p>15 that committee; is that correct?</p> <p>16 A. Yes.</p> <p>17 Q. And it says -- at that meeting was</p> <p>18 UEP's attorney, Marty Eisenstein. Do you know</p> <p>19 who Marty Eisenstein is?</p> <p>20 A. I can't say I knew what his last</p> <p>21 name was.</p> <p>22 Q. Do you know his first name?</p>
<p style="text-align: right;">554</p> <p>1 documents.</p> <p>2 MR. STUEVE: Yes. Okay.</p> <p>3 MS. LEVINE: Is that okay with</p> <p>4 everybody?</p> <p>5 MR. STUEVE: That's okay with us.</p> <p>6 MR. BARNES: That's fine.</p> <p>7 MR. STUEVE: Yes.</p> <p>8 MS. LEVINE: We're marking this</p> <p>9 part of the deposition as highly confidential,</p> <p>10 same as for the previous highly confidential UEP</p> <p>11 document under Exhibit A and we will have</p> <p>12 Mr. Rust sign Exhibit A to keep the</p> <p>13 confidentiality and this document should not be</p> <p>14 shown to anyone outside. I assume there is only</p> <p>15 counsel in the room or only counsel will review</p> <p>16 this document.</p> <p>17 MR. HICKEY: We might just have</p> <p>18 Joe sign also.</p> <p>19 MR. BARNES: He's counsel of</p> <p>20 record.</p> <p>21 MR. HICKEY: He's not outside</p> <p>22 counsel.</p>	<p style="text-align: right;">556</p> <p>1 A. Yeah. I think that's correct.</p> <p>2 Q. Marty?</p> <p>3 A. Yes.</p> <p>4 Q. Did you understand he was</p> <p>5 affiliated with Mr. Isaacson?</p> <p>6 A. Yes.</p> <p>7 Q. And it says, "Einstein stated that</p> <p>8 Capper-Volstead allows producers to talk about</p> <p>9 costs, markets, and even prices of farm</p> <p>10 products. The challenge is when discussing</p> <p>11 price or cost of egg products because this goes</p> <p>12 beyond farm production and marketing of farm</p> <p>13 products." Did I read that correctly?</p> <p>14 A. That's what you read.</p> <p>15 Q. He said, "UEP provided the</p> <p>16 protection for farm members, but this protection</p> <p>17 did not extend beyond the production and</p> <p>18 marketing of shell eggs or liquid eggs." Did I</p> <p>19 read that correctly?</p> <p>20 A. Yes.</p> <p>21 Q. And did Rose Acre have that</p> <p>22 understanding with respect to the</p>

HIGHLY CONFIDENTIAL

Rust, Marcus - Vol. II

March 6, 2014

48 (Pages 557 to 560)

<p style="text-align: right;">557</p> <p>1 Capper-Volstead Act?</p> <p>2 A. That was my understanding.</p> <p>3 Q. Okay. Then it says, "Einstein</p> <p>4 said it is important that certain guidelines be</p> <p>5 established to engage in exchange of</p> <p>6 information. It is possible to provide</p> <p>7 information, but strict guidelines need to be</p> <p>8 followed. They would include the following</p> <p>9 factors." Did I read that correctly?</p> <p>10 A. Yes.</p> <p>11 Q. And then there are several that</p> <p>12 are listed there; is that correct?</p> <p>13 A. There are several other things</p> <p>14 listed. Yeah. I haven't read those. Do I need</p> <p>15 to?</p> <p>16 Q. No.</p> <p>17 A. Are we done with this one?</p> <p>18 MR. BARNES: Yeah. I think we're</p> <p>19 done.</p> <p>20 (Rust Exhibit Number 560 was</p> <p>21 marked for identification.)</p> <p>22 BY MR. STUEVE:</p>	<p style="text-align: right;">559</p> <p>1 Q. Do you recall reviewing this</p> <p>2 document?</p> <p>3 A. No.</p> <p>4 Q. Show you what's been marked as</p> <p>5 Exhibit 134.</p> <p>6 I'm going to give you guys this.</p> <p>7 MR. BARNES: Okay.</p> <p>8 THE VIDEOGRAPHER: Off the record</p> <p>9 at 2:28 p.m.</p> <p>10 (A brief recess was taken.)</p> <p>11 THE VIDEOGRAPHER: Back on the</p> <p>12 record at 2:38 p.m.</p> <p>13 BY MR. STUEVE:</p> <p>14 Q. During the break you had the</p> <p>15 opportunity to review Exhibit 134; is that</p> <p>16 correct, sir?</p> <p>17 A. Correct.</p> <p>18 Q. Did you review this document in</p> <p>19 preparation for your deposition today?</p> <p>20 A. I glanced at it. Yes.</p> <p>21 Q. Okay. Did you communicate with</p> <p>22 counsel about it?</p>
<p style="text-align: right;">558</p> <p>1 Q. Let me show you what has been</p> <p>2 marked Exhibit 560. This is UE PRIV 0000071</p> <p>3 through 72 dated June 4, 2004.</p> <p>4 A. It's marked highly confidential.</p> <p>5 It's okay.</p> <p>6 MR. BARNES: You're going to sign</p> <p>7 an exhibit, okay. He can look at it; right,</p> <p>8 Jan? Jan?</p> <p>9 MS. LEVINE: Correct. He's a</p> <p>10 member of that committee; right?</p> <p>11 MR. BARNES: 2004?</p> <p>12 MR. HICKEY: It would have been</p> <p>13 Greg Hinton again.</p> <p>14 MS. LEVINE: He would be allowed</p> <p>15 to look at under the protective order. So we</p> <p>16 will just mark it highly confidential, but</p> <p>17 Mr. Miller would not be. So these highly</p> <p>18 confidential ones should just be seen by counsel</p> <p>19 and Mr. Rust and Mr. Rust will sign the exhibit.</p> <p>20 MR. BARNES: Okay.</p> <p>21 MS. LEVINE: Thank you.</p> <p>22 BY MR. STUEVE:</p>	<p style="text-align: right;">560</p> <p>1 A. We looked at it. They showed it</p> <p>2 to me. Yes.</p> <p>3 Q. Okay. All right. And did you</p> <p>4 remember receiving this in February of 2006 from</p> <p>5 Roger Deffner?</p> <p>6 A. Vaguely.</p> <p>7 Q. And this would have been at the</p> <p>8 time you were contemplating putting together an</p> <p>9 egg producer co-op; correct?</p> <p>10 A. An egg product marketing co-op.</p> <p>11 Q. An eggs product co-op; is that</p> <p>12 correct?</p> <p>13 A. Correct.</p> <p>14 Q. And one of the requirements to be</p> <p>15 a member of that co-op would be you had to be</p> <p>16 UEP certified; is that right?</p> <p>17 A. Correct.</p> <p>18 Q. And --</p> <p>19 A. It was going to be a certified egg</p> <p>20 product marketing co-op.</p> <p>21 Q. And this Roger Deffner was one of</p> <p>22 the other egg producers that was involved in the</p>

HIGHLY CONFIDENTIAL

Rust, Marcus - Vol. II

March 6, 2014

49 (Pages 561 to 564)

<p style="text-align: right;">561</p> <p>1 creation of the egg products co-op?</p> <p>2 A. In the attempt of the creation.</p> <p>3 Correct.</p> <p>4 Q. All right. And in your</p> <p>5 communications with Roger Deffner, National</p> <p>6 Foods, he sent you a couple of Capper-Volstead</p> <p>7 pieces that you may have seen?</p> <p>8 A. Correct.</p> <p>9 Q. And, if you would, over on 85505</p> <p>10 there's a -- the Brann & Isaacson law firm name</p> <p>11 up at the top, it says attorney-client</p> <p>12 privileged communications, it says UEP Marketing</p> <p>13 Committee antitrust issues, November 16, 2004.</p> <p>14 Do you see that?</p> <p>15 A. Correct.</p> <p>16 Q. Do you recall seeing this</p> <p>17 document, the November 16, 2004 document in 2004</p> <p>18 as part of the Marketing Committee?</p> <p>19 A. Could have. I don't recall.</p> <p>20 Q. Okay. Were you aware, sir, that</p> <p>21 these documents were also presented at the</p> <p>22 Economic Summit in November 2004?</p>	<p style="text-align: right;">563</p> <p>1 A. That's where you would do nothing</p> <p>2 with somebody that wasn't a member of the co-op.</p> <p>3 Q. For example, refusing to purchase</p> <p>4 eggs from a noncertified producer; right?</p> <p>5 MR. BARNES: Object to the form of</p> <p>6 the question. You're taking a legal opinion</p> <p>7 letter with legal language and essentially</p> <p>8 asking this layperson to interpret, particularly</p> <p>9 the term boycott. He's given you his every day</p> <p>10 basic understanding, but to the extent that</p> <p>11 you're relying on a lawyer's letter and</p> <p>12 representation, I'll just object to the form.</p> <p>13 MR. STUEVE: If you would read</p> <p>14 back my question and I'll ask you to answer it</p> <p>15 for me, sir.</p> <p>16 (The record was read as</p> <p>17 requested.)</p> <p>18 THE WITNESS: And what are you</p> <p>19 meaning, purchase?</p> <p>20 BY MR. STUEVE:</p> <p>21 Q. The boycott of nonmembers of a</p> <p>22 cooperative, an example of that would be where</p>
<p style="text-align: right;">562</p> <p>1 A. Could have been.</p> <p>2 Q. And if you would, if you look</p> <p>3 under the bullet point that says on that page,</p> <p>4 we're still on 505, "the following activities</p> <p>5 are probably not protected." Do you see that?</p> <p>6 A. Which one again? Which page?</p> <p>7 Q. On that page, 505, that we were</p> <p>8 just looking at, November 16, 2004.</p> <p>9 A. Okay.</p> <p>10 Q. The fourth bullet point down it</p> <p>11 says, "the following activities are probably not</p> <p>12 protected." Do you see that?</p> <p>13 A. Correct.</p> <p>14 Q. And it says, the second bullet</p> <p>15 point is, "boycott of nonmembers of</p> <p>16 cooperative." Do you see that?</p> <p>17 A. Yeah.</p> <p>18 Q. You know what boycott means; don't</p> <p>19 you?</p> <p>20 A. I would assume.</p> <p>21 Q. What do you understand that to</p> <p>22 mean?</p>	<p style="text-align: right;">564</p> <p>1 you would refuse to purchase eggs from a</p> <p>2 noncertified producer; correct?</p> <p>3 A. Are you asking if we did that?</p> <p>4 Q. No. I'm asking if that's an</p> <p>5 example of boycotting?</p> <p>6 A. That's what it states here.</p> <p>7 Q. And then what about it also said,</p> <p>8 "what's probably not protected, efforts to</p> <p>9 coerce members to join the cooperative." What</p> <p>10 was your understanding of that?</p> <p>11 A. I'm not sure what efforts to</p> <p>12 coerce nonmembers would mean.</p> <p>13 Q. It says, "agreements with</p> <p>14 nonmembers regarding prices, exchange of price</p> <p>15 information." What do you understand that to</p> <p>16 mean?</p> <p>17 A. I guess that would mean -- I would</p> <p>18 assume it would mean talking to a nonmember</p> <p>19 about prices.</p> <p>20 Q. Now, and then under the gray area</p> <p>21 it says, "agreements regarding supply of eggs to</p> <p>22 the market." Do you see that?</p>

HIGHLY CONFIDENTIAL

Rust, Marcus - Vol. II

March 6, 2014

50 (Pages 565 to 568)

<p style="text-align: right;">565</p> <p>1 A. Correct.</p> <p>2 Q. Did you remember reading that in</p> <p>3 2004?</p> <p>4 A. Yeah.</p> <p>5 Q. Now, over on the next page there's</p> <p>6 risks. Under risk the first bullet point is,</p> <p>7 "there's no clear holding in any case that</p> <p>8 production limits are within the exemption, but</p> <p>9 Alexander helps but only in the Ninth Circuit."</p> <p>10 Do you see that?</p> <p>11 A. Correct. I see that.</p> <p>12 MR. BARNES: Excuse me, Pat. For</p> <p>13 the record, it is incorrect. It's Eighth</p> <p>14 Circuit. That was an Eighth Circuit decision.</p> <p>15 BY MR. STUEVE:</p> <p>16 Q. But you see the statement there,</p> <p>17 "there's no clear holding in any case that</p> <p>18 production limits are within the exemption." Do</p> <p>19 you see that?</p> <p>20 A. I have no idea what Alexander is.</p> <p>21 Q. But you know what production</p> <p>22 limits are; right?</p>	<p style="text-align: right;">567</p> <p>1 UEP certified program, if you -- the only thing</p> <p>2 that you could be decertified for was not</p> <p>3 complying with the cage space requirement;</p> <p>4 correct?</p> <p>5 MS. LEVINE: Objection.</p> <p>6 THE WITNESS: That could have</p> <p>7 been.</p> <p>8 BY MR. STUEVE:</p> <p>9 Q. Now, then it says, "there should</p> <p>10 be no agreements with egg breakers, re:</p> <p>11 Supply." Do you see that?</p> <p>12 A. Yeah.</p> <p>13 Q. And then it says, "there should be</p> <p>14 no attempt to set guidelines or limitations for</p> <p>15 nonmembers." Do you see that?</p> <p>16 A. Correct.</p> <p>17 Q. Then it goes on, the second to</p> <p>18 last bullet point says, "there should be no</p> <p>19 attempt to boycott or curtail business with a</p> <p>20 nonmember regarding failure to follow</p> <p>21 guidelines, for that matter, regarding any other</p> <p>22 issues;" right?</p>
<p style="text-align: right;">566</p> <p>1 A. I think so.</p> <p>2 Q. Those would be agreements to</p> <p>3 limit, for example, the supply of eggs; right?</p> <p>4 A. If there was such an agreement.</p> <p>5 Q. That would fall within that</p> <p>6 category; right?</p> <p>7 A. If there was a production limit</p> <p>8 agreement that would be in the contract or</p> <p>9 something. Yeah.</p> <p>10 Q. Now, if you look at some</p> <p>11 absolutes. It says, "if go beyond exchange of</p> <p>12 information then should style the item as</p> <p>13 marketing guidelines, i.e., how many eggs to</p> <p>14 sell and not to produce or purchase." Do you</p> <p>15 see that?</p> <p>16 A. I'm not sure what that means.</p> <p>17 Q. And then it goes on to say under</p> <p>18 some absolutes, "the quantities should be</p> <p>19 guidelines and suggestions and there should be</p> <p>20 no penalties for failure to follow;" right?</p> <p>21 A. That's what it says.</p> <p>22 Q. So, for example, if you -- under</p>	<p style="text-align: right;">568</p> <p>1 A. That's what it says. Yes.</p> <p>2 Q. And then also under some</p> <p>3 absolutes, "there should be no efforts to coerce</p> <p>4 nonmembers to join UEP." Did I read that</p> <p>5 correctly?</p> <p>6 A. Yes.</p> <p>7 Q. And you would have read this in</p> <p>8 November 2004; correct?</p> <p>9 A. Yes.</p> <p>10 Q. Now, also if you would, go back to</p> <p>11 505. The last three digits. Do you see it?</p> <p>12 The Bates range, I'm sorry.</p> <p>13 MR. BARNES: I'm sorry. I'm</p> <p>14 looking for Exhibit 505. I'm sorry about that.</p> <p>15 Thanks, David. Okay. I'm with you now.</p> <p>16 MR. STUEVE: That's what happens</p> <p>17 when we get gray hair, we start losing the whole</p> <p>18 day.</p> <p>19 MR. BARNES: Okay.</p> <p>20 BY MR. STUEVE:</p> <p>21 Q. On 505 of Exhibit 134 you'll see</p> <p>22 up there under the first bullet point there is a</p>

HIGHLY CONFIDENTIAL

Rust, Marcus - Vol. II

March 6, 2014

51 (Pages 569 to 572)

<p style="text-align: right;">569</p> <p>1 reference to, "see Irving Isaacson February 5th, 2 1992 memo attached." Do you see that?</p> <p>3 A. Correct.</p> <p>4 Q. Now, if you turn to 507, can you 5 confirm that this is the beginning page of the 6 February 4th, 1992 Irving Isaacson memo?</p> <p>7 A. That's what it appears to be.</p> <p>8 Q. All right. And do you remember 9 reviewing this in November of 2004 when it was 10 distributed?</p> <p>11 A. I remember looking at it. I don't 12 remember word for word verbatim.</p> <p>13 Q. All right. If you would, on 511, 14 so the last three.</p> <p>15 Do you see that -- are you at 511?</p> <p>16 A. Yes.</p> <p>17 Q. Under the section antitrust 18 consequences it says, "it should be pointed out 19 clearly and forcibly that there are no partial 20 farmer cooperatives." Did I read that 21 correctly?</p> <p>22 A. That's what it reads.</p>	<p style="text-align: right;">571</p> <p>1 meeting; is that right?</p> <p>2 A. Yes.</p> <p>3 Q. And he's the same attorney who UEP 4 asked to attend a meeting of United Egg 5 Producers to present the supply management 6 program that was being implemented for the 7 potato industry; is that correct, sir?</p> <p>8 A. Correct.</p> <p>9 Q. And did you invite him to this 10 meeting?</p> <p>11 A. I don't recall that I did.</p> <p>12 Q. Who paid his fees to attend this 13 meeting?</p> <p>14 A. I don't recall. I don't know -- 15 this meeting?</p> <p>16 Q. Yeah.</p> <p>17 A. I think we did, the producer 18 group.</p> <p>19 Q. Okay. And would Rose Acre have 20 contributed to the payment of his fees?</p> <p>21 A. Yes, to this meeting.</p> <p>22 Q. Okay. Anyone else?</p>
<p style="text-align: right;">570</p> <p>1 Q. "Every single member of the 2 cooperative must be a bona fide agriculture 3 producer, whatever that term means;" right?</p> <p>4 A. That's what it says.</p> <p>5 Q. Okay.</p> <p>6 (Rust Exhibit Number 561 was 7 marked for identification.) 8 BY MR. STUEVE:</p> <p>9 Q. I'll show you what's been marked 10 as Exhibit 561. This is NL 01200644 through 46.</p> <p>11 This is minutes of a meeting of 12 the Board of Directors of Certified Egg 13 Products, Inc.</p> <p>14 What was Certified Egg Products, 15 Inc.?</p> <p>16 A. I believe I explained that before. 17 It was an attempt to start a certified egg 18 products marketing co-op group.</p> <p>19 Q. And you attended the meeting; 20 correct?</p> <p>21 A. Yes.</p> <p>22 Q. And Randon Wilson was at the</p>	<p style="text-align: right;">572</p> <p>1 A. I remember we ponied up some 2 money. I don't remember how much. I'm pretty 3 sure everybody paid.</p> <p>4 Q. Okay. Do you remember anything 5 specific about his presentation, sitting here 6 today?</p> <p>7 A. Not -- if you're asking me to 8 rattle off something, not a lot.</p> <p>9 Q. I just want to know, sitting here 10 today, do you remember anything specifically 11 Mr. Wilson provided concerning the 12 Capper-Volstead Act and its application to 13 Certified Egg Products, Inc. Co-op?</p> <p>14 A. He went through a whole bunch of 15 stuff. I can't recollect verbatim what anything 16 was.</p> <p>17 Q. Did you keep it?</p> <p>18 A. I would assume we did. I don't 19 know.</p> <p>20 Q. Okay. Best of your recollection, 21 you kept what he handed out?</p> <p>22 A. I have no idea.</p>

HIGHLY CONFIDENTIAL

Rust, Marcus - Vol. II

March 6, 2014

52 (Pages 573 to 576)

<p style="text-align: right;">573</p> <p>1 Q. Do you have a file concerning your</p> <p>2 efforts to start-up the Certified Egg Products,</p> <p>3 Inc.?</p> <p>4 A. Someplace, I think.</p> <p>5 Q. Okay. Do you know if that's been</p> <p>6 produced to counsel?</p> <p>7 A. I would -- I don't know if it was</p> <p>8 ever asked for. I don't know.</p> <p>9 MR. STUEVE: We produced CEP</p> <p>10 documents, I think they were from your file.</p> <p>11 I'll have to double-check to see where they came</p> <p>12 from.</p> <p>13 MR. BARNES: This document came</p> <p>14 from -- that's got NL.</p> <p>15 That's right. That's NL. It's</p> <p>16 not signed, either. Okay.</p> <p>17 (Rust Exhibit Number 562 was</p> <p>18 marked for identification.)</p> <p>19 BY MR. STUEVE:</p> <p>20 Q. Show you what's been marked 562,</p> <p>21 which is RAUPDATE 0080669 through 675.</p> <p>22 A. Okay.</p>	<p style="text-align: right;">575</p> <p>1 production and marketing of UEP certified eggs.</p> <p>2 I've asked Kevin Haley to review this motion in</p> <p>3 advance and provide his legal opinion in respect</p> <p>4 to the antitrust violations. Kevin just</p> <p>5 completed his review yesterday and e-mailed it</p> <p>6 to me. Please now find attached the letter and</p> <p>7 motion from Rose Acre's and Kevin Haley's</p> <p>8 opinion." Did I read that correctly?</p> <p>9 A. Yes.</p> <p>10 Q. Then, if you would, over on Bates</p> <p>11 range 670 of Exhibit 562, that is the -- it to a</p> <p>12 two page proposed motion that's signed by KY</p> <p>13 Hendrix of Rose Acre; correct?</p> <p>14 A. Correct.</p> <p>15 Q. Did you help him prepare this</p> <p>16 document?</p> <p>17 A. I don't recall.</p> <p>18 Q. This, in fact, incorporates the</p> <p>19 very concept that you had presented to Gene</p> <p>20 Gregory; is that correct?</p> <p>21 A. It incorporates the concept that I</p> <p>22 had, but I don't recall if I participated in the</p>
<p style="text-align: right;">574</p> <p>1 Q. This is dated October of 2006; is</p> <p>2 that right, the cover page?</p> <p>3 A. Yeah. That's what it's dated.</p> <p>4 Q. And this was right around the time</p> <p>5 that UEP was considering whether to allow</p> <p>6 Michael Foods, a significant competitor of Rose</p> <p>7 Acre, to join the UEP certified program;</p> <p>8 correct?</p> <p>9 A. It could have been.</p> <p>10 Q. And you all opposed that; correct?</p> <p>11 A. We have always felt producers</p> <p>12 should treat all their birds the same.</p> <p>13 Q. If you just answer my question.</p> <p>14 You opposed Michael Foods being</p> <p>15 allowed into the UEP certified program without</p> <p>16 compliance with the 100 percent rule; right?</p> <p>17 A. Correct.</p> <p>18 Q. All right. And this is an e-mail</p> <p>19 from Gene Gregory. On the first page it says,</p> <p>20 "during the Animal Welfare Committee meeting on</p> <p>21 Tuesday, October 10th KY Hendrix from Rose Acre</p> <p>22 Farms will introduce a motion regarding the</p>	<p style="text-align: right;">576</p> <p>1 typing of this document.</p> <p>2 Q. But the concept is your concept;</p> <p>3 right?</p> <p>4 A. Yes.</p> <p>5 Q. And it says, "any company which</p> <p>6 sells or markets UEP certified shell eggs or egg</p> <p>7 products may be approved to sell UEP certified</p> <p>8 shell eggs and egg products if and only if the</p> <p>9 following schedule is met: 2006, 95 percent of</p> <p>10 all shell eggs and egg products sold or marketed</p> <p>11 as certified;" right?</p> <p>12 A. That's what it says. Yes.</p> <p>13 Q. So you were willing to make a very</p> <p>14 slight adjustment to the 100 percent rule;</p> <p>15 right?</p> <p>16 A. We wanted to get all producers to</p> <p>17 get to treating all their chickens the same.</p> <p>18 Q. So if you would answer my</p> <p>19 question, you were making a recommendation to</p> <p>20 make a slight adjustment to the 100 percent</p> <p>21 rule; right?</p> <p>22 A. To get them to treat their</p>

HIGHLY CONFIDENTIAL

Rust, Marcus - Vol. II

March 6, 2014

53 (Pages 577 to 580)

<p style="text-align: right;">577</p> <p>1 chickens the same. Yes.</p> <p>2 Q. And so rather than having</p> <p>3 100 percent of the shell eggs and egg products</p> <p>4 sold and marketed as certified, you would phase</p> <p>5 that in from 95 percent to 100 percent over a</p> <p>6 six year period; is that right?</p> <p>7 A. Yes.</p> <p>8 Q. All right. And there was, in</p> <p>9 fact, legal concerns raised about that; is that</p> <p>10 correct?</p> <p>11 A. I have to read that. I'm not</p> <p>12 sure.</p> <p>13 Q. All right.</p> <p>14 A. What was your question?</p> <p>15 MR. BARNES: I don't think there</p> <p>16 was one.</p> <p>17 BY MR. STUEVE:</p> <p>18 Q. There were legal concerns raised</p> <p>19 about your proposal; correct?</p> <p>20 A. Yes.</p> <p>21 Q. And were you provided a copy of</p> <p>22 the Brann & Isaacson analysis?</p>	<p style="text-align: right;">579</p> <p>1 because it shrinks the market for uncertified</p> <p>2 products." Did I read that correctly?</p> <p>3 A. That's what it reads.</p> <p>4 Q. "In addition to being inherently</p> <p>5 anticompetitive, this makes it more difficult to</p> <p>6 argue that the program is truly voluntarily.</p> <p>7 The clearest antitrust violations occur when an</p> <p>8 organization or a major player within the</p> <p>9 organization uses its position of strength to</p> <p>10 develop a certification or standard that targets</p> <p>11 a competitor or competing product for</p> <p>12 exclusion." Do you see that?</p> <p>13 A. Yes.</p> <p>14 Q. Do you remember those legal</p> <p>15 concerns being raised?</p> <p>16 A. I remember something was raised.</p> <p>17 I don't recall the exact details of it.</p> <p>18 Q. Did you ever ask Mr. Haley or Gene</p> <p>19 Gregory that if --</p> <p>20 A. Me personally?</p> <p>21 Q. If you let me finish my question.</p> <p>22 Did you ever ask, let me start</p>
<p style="text-align: right;">578</p> <p>1 A. I don't recollect.</p> <p>2 Q. Okay. Now, this was the firm that</p> <p>3 Mr. Haley, Kevin Haley is a part of the firm</p> <p>4 Brann & Isaacson that we already identified you</p> <p>5 had some trust issues with; is that correct?</p> <p>6 A. Right.</p> <p>7 Q. And, if you would, on 74 on that</p> <p>8 page, the last paragraph there the sentence</p> <p>9 starts with if. "If the motion is adopted," and</p> <p>10 they're referring to Rose Acre's motion; right?</p> <p>11 A. Correct.</p> <p>12 Q. "If the motion is adopted the</p> <p>13 program would add restraints on external</p> <p>14 dealings that could expose the program to</p> <p>15 greater antitrust scrutiny." Did I read that</p> <p>16 correctly?</p> <p>17 A. Yes.</p> <p>18 Q. "Secondly, as participation in the</p> <p>19 program continues to grow, the imposition of</p> <p>20 restriction on the marketing of uncertified eggs</p> <p>21 creates ever increasing economic pressure for</p> <p>22 noncertified companies to become certified</p>	<p style="text-align: right;">580</p> <p>1 with Gene Gregory.</p> <p>2 Did you ever ask Gene Gregory</p> <p>3 after reviewing this document as to whether or</p> <p>4 not those same concerns had been addressed</p> <p>5 related to the 100 percent rule?</p> <p>6 A. Restate your question again.</p> <p>7 Q. After you read this document did</p> <p>8 you go to Gene Gregory and say, well, wait a</p> <p>9 minute. If there are concerns about what I'm</p> <p>10 proposing, what about the 100 percent rule?</p> <p>11 A. I don't recall reading this</p> <p>12 document here.</p> <p>13 Q. You obviously were aware that your</p> <p>14 motion was rejected; right?</p> <p>15 A. Yes.</p> <p>16 Q. And you were told, I assume, that</p> <p>17 the principal objection to it was it raised</p> <p>18 legal concerns?</p> <p>19 A. I don't recall.</p> <p>20 Q. Did you ever ask what legal</p> <p>21 concerns there were?</p> <p>22 A. I don't recall.</p>

HIGHLY CONFIDENTIAL

Rust, Marcus - Vol. II

March 6, 2014

54 (Pages 581 to 584)

<p style="text-align: right;">581</p> <p>1 Q. You currently were provided a copy</p> <p>2 of those legal concerns; right?</p> <p>3 A. This here?</p> <p>4 Q. Yeah.</p> <p>5 A. I don't recall having seen it.</p> <p>6 Q. Well, if you would, going back to</p> <p>7 the first page of 562, you're listed as a</p> <p>8 recipient of this e-mail that attached Kevin</p> <p>9 Haley's memorandum raising the legal concerns</p> <p>10 concerning your motion; correct?</p> <p>11 A. I do not recall the document.</p> <p>12 Q. But you do -- you can confirm you</p> <p>13 are listed there; right?</p> <p>14 A. Which one?</p> <p>15 Q. The --</p> <p>16 A. Yes. I would be listed on the</p> <p>17 third line. Correct.</p> <p>18 Q. Did you -- did you confer with</p> <p>19 Roger Wilson after receiving this memo from</p> <p>20 Brann & Isaacson?</p> <p>21 A. Who is Roger Wilson?</p> <p>22 Q. Excuse me. Randon Wilson?</p>	<p style="text-align: right;">583</p> <p>1 Exhibit 563. UE 020105 through 07.</p> <p>2 This is a document from United Egg</p> <p>3 Producers to Mr. Richard Brown of Urner Barry</p> <p>4 Publications; is that correct?</p> <p>5 A. Yes.</p> <p>6 Q. This would have been</p> <p>7 November 2002, that's the date of it; right?</p> <p>8 A. That's when it's dated. Correct.</p> <p>9 Q. And this would have been after</p> <p>10 Rose Acre had joined UEP; correct?</p> <p>11 A. Yes.</p> <p>12 Q. In fact, if you turn to 06 you'll</p> <p>13 see Greg Hinton is listed as a committee member</p> <p>14 participating in a call on November 22nd?</p> <p>15 A. Yes.</p> <p>16 Q. And it says, "UEP's Marketing</p> <p>17 Committee met via conference call November 22nd</p> <p>18 and in the discussion some members reminded us</p> <p>19 that you had pledged when a great majority of</p> <p>20 companies are animal care certified in trading</p> <p>21 eggs Urner Barry would consider the shell egg</p> <p>22 quote as a certified quote." Did I read that</p>
<p style="text-align: right;">582</p> <p>1 A. I don't recall.</p> <p>2 Q. Do you remember running by this</p> <p>3 motion with Randon Wilson before it was</p> <p>4 proposed?</p> <p>5 A. I don't recall.</p> <p>6 Q. Do you know if Randon Wilson had</p> <p>7 any participation in the drafting of your</p> <p>8 motion?</p> <p>9 A. I don't recall that he did.</p> <p>10 MR. STUEVE: I'm going to take a</p> <p>11 quick break here.</p> <p>12 THE VIDEOGRAPHER: This is the end</p> <p>13 of videotape number three. Off the record at</p> <p>14 3:08.</p> <p>15 (A brief recess was taken.)</p> <p>16 THE VIDEOGRAPHER: This is the</p> <p>17 beginning of tape number four. Back on the</p> <p>18 record at 3:22 p.m.</p> <p>19 (Rust Exhibit Number 563 was</p> <p>20 marked for identification.)</p> <p>21 BY MR. STUEVE:</p> <p>22 Q. Let me show you what's been marked</p>	<p style="text-align: right;">584</p> <p>1 correctly?</p> <p>2 A. Start over again. I wasn't</p> <p>3 100 percent where you was at.</p> <p>4 Q. Right in the very first paragraph.</p> <p>5 A. UEP Marketing Committee?</p> <p>6 Q. Correct.</p> <p>7 A. Okay. What did you ask?</p> <p>8 Q. It says, "UEP's Marketing</p> <p>9 Committee met via conference call on</p> <p>10 November 22nd and in the discussion some members</p> <p>11 reminded us that you had pledged when a great</p> <p>12 majority of companies are animal care certified</p> <p>13 and trading eggs Urner Barry would consider the</p> <p>14 shell egg quote as a certified quote." Do you</p> <p>15 see that?</p> <p>16 A. Yes.</p> <p>17 Q. In fact, is that what happened?</p> <p>18 A. I think there were two different</p> <p>19 quotes.</p> <p>20 Q. There would be a quote for</p> <p>21 certified and a quote for --</p> <p>22 A. And a quote for regular, I think.</p>

HIGHLY CONFIDENTIAL

Rust, Marcus - Vol. II

March 6, 2014

55 (Pages 585 to 588)

<p style="text-align: right;">585</p> <p>1 Q. And we've seen some documents in 2 which you were comparing the certified quote to 3 the noncertified quote. Do you remember doing 4 that?</p> <p>5 A. Vaguely.</p> <p>6 Q. And the certified quote would be 7 higher than the noncertified quote; right?</p> <p>8 A. Yes. It would need to be. Yes.</p> <p>9 Q. Do you remember what the variance 10 was? What the spread was?</p> <p>11 A. No.</p> <p>12 Q. Did you track that?</p> <p>13 A. Someone in our sales department 14 would have. I didn't personally.</p> <p>15 Q. Would that have been under the 16 supervision of Greg Hinton?</p> <p>17 A. Yes.</p> <p>18 Q. Okay. He would be the one to ask 19 that question?</p> <p>20 A. Yeah.</p> <p>21 Q. All right. Now, it says in here, 22 "as of March of 2002, that with 213 million</p>	<p style="text-align: right;">587</p> <p>1 Gene Gregory and then you -- at the last 2 sentence you say, "side subject, grapevine rumor 3 mill has it that Sparboe was going to use same 4 audit firm as UEP for their so-called good hen 5 program." Do you see that?</p> <p>6 A. Yeah.</p> <p>7 Q. Do you remember learning that 8 through the rumor mill and reporting that to 9 Gene Gregory, the president of UEP?</p> <p>10 A. Repeat that question again.</p> <p>11 MR. STUEVE: You can read it back. 12 (The record was read as 13 requested.)</p> <p>14 MS. LEVINE: Objection.</p> <p>15 THE WITNESS: Evidently. Correct. 16 Evidently.</p> <p>17 BY MR. STUEVE:</p> <p>18 Q. Now, at this time you were aware 19 that Sparboe had left the UEP certified program; 20 correct?</p> <p>21 A. I don't remember the exact time. 22 There was a time period they left.</p>
<p style="text-align: right;">586</p> <p>1 layers now enrolled in the program and this 2 representing nearly 100 percent of the shell 3 eggs needed to supply the shell egg markets, 4 that the quote should now be considered as an 5 animal care certified quote." Did I read that 6 correctly?</p> <p>7 A. Yes.</p> <p>8 MR. BARNES: Object to the form. 9 I don't think you did. Go ahead and ask the 10 question.</p> <p>11 BY MR. STUEVE:</p> <p>12 Q. Was that consist with your 13 understanding?</p> <p>14 A. That's what it says here.</p> <p>15 Q. Yeah. Okay.</p> <p>16 (Rust Exhibit Number 564 was 17 marked for identification.)</p> <p>18 BY MR. STUEVE:</p> <p>19 Q. Show you what's been marked as 20 Exhibit 564, it's RAUPDATE 0035857.</p> <p>21 Sir, if you would, if you look at 22 the bottom of 564, it's an e-mail from you to</p>	<p style="text-align: right;">588</p> <p>1 Q. And you remember that they left 2 because they believed the certified program was 3 being used as a pretext to reduce the supply of 4 eggs and increase prices. Do you remember that?</p> <p>5 MR. BARNES: Object to the form.</p> <p>6 THE WITNESS: My understanding the 7 reason they left was because they didn't want -- 8 they wanted the ability to have chickens under 9 three different systems and still qualify as an 10 animal care producer. They wanted to have 11 chickens at 45 or 48 inches for the egg products 12 industry.</p> <p>13 They wanted to have chickens at 14 whatever the UEP number was at that given time. 15 And then they wanted to have chickens at the 16 McDonald's number.</p> <p>17 BY MR. STUEVE:</p> <p>18 Q. They were opposed to the 19 100 percent rule because they believed that it 20 was a pretext to reduce the supply of eggs and 21 increase prices; correct?</p> <p>22 MR. BARNES: Object to the form of</p>

HIGHLY CONFIDENTIAL

Rust, Marcus - Vol. II

March 6, 2014

56 (Pages 589 to 592)

<p style="text-align: right;">589</p> <p>1 the question.</p> <p>2 THE WITNESS: I think that is what</p> <p>3 Bob believed. Yes.</p> <p>4 BY MR. STUEVE:</p> <p>5 Q. And you were -- you did not want</p> <p>6 them, Sparboe, to have the ability to use an</p> <p>7 alternative animal welfare program; correct?</p> <p>8 A. I wanted all producers to utilize</p> <p>9 the same program so we could draw a line in the</p> <p>10 sand with HSUSP, animal rights organizations and</p> <p>11 defend that line and not give in and go cage</p> <p>12 free again.</p> <p>13 Q. If you would, if you could just</p> <p>14 answer my question. If you would read it back.</p> <p>15 (The record was read as</p> <p>16 requested.)</p> <p>17 THE WITNESS: I did not -- I</p> <p>18 didn't care if they used an alternative program.</p> <p>19 What I cared about was there were certain</p> <p>20 programs that may have allowed you to do</p> <p>21 different things. I wanted all chickens treated</p> <p>22 the same. If someone is going to be in the</p>	<p style="text-align: right;">591</p> <p>1 Q. And then Gene indicates that, "we</p> <p>2 are, this week, making our concerns known to</p> <p>3 FMI;" is that correct?</p> <p>4 A. That's what it states there. Yes.</p> <p>5 Q. And what Gene was hoping in</p> <p>6 response to your concern is that FMI would not</p> <p>7 accept this alternative animal welfare program</p> <p>8 that Sparboe was utilizing; correct?</p> <p>9 MR. BARNES: Object to form.</p> <p>10 MS. LEVINE: Objection.</p> <p>11 MR. BARNES: You can answer.</p> <p>12 THE WITNESS: I heard that and now</p> <p>13 I don't remember what he asked.</p> <p>14 MR. STUEVE: Read the question</p> <p>15 back.</p> <p>16 (The record was read as</p> <p>17 requested.)</p> <p>18 MR. BARNES: Same objection.</p> <p>19 THE WITNESS: I have no idea what</p> <p>20 Gene was hoping.</p> <p>21 BY MR. STUEVE:</p> <p>22 Q. But he told you that he was going</p>
<p style="text-align: right;">590</p> <p>1 animal welfare business you can't say you're a</p> <p>2 good animal welfare person, you know, squeeze</p> <p>3 chickens over on this farm, this farm do it this</p> <p>4 way and this farm do it this way. That's</p> <p>5 evidently why McDonald's dumped Sparboe's.</p> <p>6 BY MR. STUEVE:</p> <p>7 Q. Sir, the fact is you were upset</p> <p>8 about the fact that Sparboe was attempting to</p> <p>9 use an alternative animal welfare program;</p> <p>10 correct?</p> <p>11 MR. BARNES: Object to form.</p> <p>12 THE WITNESS: I probably was.</p> <p>13 Yeah.</p> <p>14 BY MR. STUEVE:</p> <p>15 Q. That's why you were notifying Gene</p> <p>16 Gregory they supposedly they were using the same</p> <p>17 audit firm as UEP; right?</p> <p>18 A. As you see there, it says side</p> <p>19 subject, grapevine rumor mill has it that</p> <p>20 Sparboe, I misspelled it, is going to use the</p> <p>21 same audit firm as UEP for their so-called good</p> <p>22 hen program. That's what I relayed to Gene.</p>	<p style="text-align: right;">592</p> <p>1 to -- was going to raise our concerns to FMI;</p> <p>2 right?</p> <p>3 A. That's what he told us.</p> <p>4 Q. And that that concern was that</p> <p>5 Sparboe was using an alternative animal welfare</p> <p>6 program; right?</p> <p>7 MR. BARNES: Objection.</p> <p>8 MS. LEVINE: Objection.</p> <p>9 THE WITNESS: I'm not sure that</p> <p>10 was what the question stated, but.</p> <p>11 BY MR. STUEVE:</p> <p>12 Q. You said, hey, wait a minute,</p> <p>13 they're using the same audit firm as UEP; right?</p> <p>14 A. Yes.</p> <p>15 Q. You told that to Gene Gregory;</p> <p>16 right?</p> <p>17 A. I said that's side subject,</p> <p>18 grapevine rumor mill has it that Sparboe is</p> <p>19 going to use the same audit firm as UEP for</p> <p>20 their so-called good hen program. That's what I</p> <p>21 said.</p> <p>22 Q. And he said, "while SES is not</p>

HIGHLY CONFIDENTIAL

Rust, Marcus - Vol. II

March 6, 2014

57 (Pages 593 to 596)

<p style="text-align: right;">593</p> <p>1 associated with UEP's audit and not approved by 2 us, the SES audit is, however, approved by FMI." 3 So he's saying, look, the audit firm they're 4 using is approved by FMI and we're going to 5 raise our concerns to FMI; right? 6 MR. BARNES: Object. 7 MS. LEVINE: Objection. 8 THE WITNESS: It does not say 9 raise. 10 BY MR. STUEVE: 11 Q. It says we are this week making 12 our concerns known to FMI; right? 13 A. That's what it says. 14 Q. Okay. Is that different to you 15 than raising? 16 A. Different word. 17 Q. Okay. Let me rephrase it then. 18 You were told that UEP was going to make our 19 concerns known to FMI; right? 20 A. That's what it says right there. 21 Q. And the concern that you had was 22 shared by Gene Gregory; correct?</p>	<p style="text-align: right;">595</p> <p>1 thing that Sparboe did; right, Mr. Rust? 2 MR. BARNES: Object to form. 3 THE WITNESS: I don't recollect 4 what my concern was, as I related no concern in 5 this e-mail. 6 (Rust Exhibit Number 565 was 7 marked for identification.) 8 BY MR. STUEVE: 9 Q. Show you what's been marked as 10 565, it's RAUPDATE 0038374 through 77. 11 I'm going to ask you about the top 12 two e-mails on the first page of 565. Have you 13 had a chance to review those? 14 A. I'm reading. Okay. One page is 15 blank. 16 Q. If you would, on your e-mail from 17 you to Gene Gregory, who was in management at 18 UEP; is that correct? 19 A. Yeah. 20 Q. He was one of the leaders of 21 United Egg Producers? 22 A. Yeah.</p>
<p style="text-align: right;">594</p> <p>1 MR. BARNES: Objection. Form. 2 THE WITNESS: I never really have 3 a concern. It says, side subject, grapevine 4 rumor mill has it that Sparboe is going to use 5 the same audit firm as UEP for their so-called 6 good hen program. That's what I said. 7 BY MR. STUEVE: 8 Q. Right. And your concern was is 9 that if FMI allowed Sparboe to use SES that 10 other egg producers would leave the certified 11 program and use SES just like Sparboe did; 12 right? 13 MR. BARNES: Object to form. 14 THE WITNESS: I see no place in my 15 notes I even mentioned FMI. You're saying I 16 mentioned FMI. I didn't mention FMI. 17 BY MR. STUEVE: 18 Q. The reason why you reported the 19 fact that Sparboe was using the same audit firm 20 as UEP is you were concerned that if that were 21 permitted or approved by FMI that others would 22 leave the certified program and do the same</p>	<p style="text-align: right;">596</p> <p>1 Q. Okay. And it says, "Gene, scuttle 2 bug has it Michaels is still backfilling. 3 Industry spies at work. Mexicans. I think 4 Terry should be advised that maybe backfilling 5 isn't the wisest thing to do under the 6 microscope they're under." Do you see that? 7 A. Yes. 8 Q. Now, this is before they had 9 joined; right? 10 A. I don't recollect the actual date. 11 Q. Well, you go on to say, "I realize 12 they are not on the program as of yet and is 13 legal but not in the question of the program." 14 Do you see that? 15 A. Yeah. 16 Q. So this would have been at the 17 time, again, where you were upset that they were 18 going to be permitted to join without 19 100 percent -- without compliance with the 20 100 percent rule; right? 21 A. Could have been. 22 Q. And so you were reporting to Gene</p>

HIGHLY CONFIDENTIAL

Rust, Marcus - Vol. II

March 6, 2014

58 (Pages 597 to 600)

<p style="text-align: right;">597</p> <p>1 that, in fact, even before they joined that they 2 were engaged in backfilling; right?</p> <p>3 A. Yeah.</p> <p>4 Q. Do you remember how you learned 5 that Michaels was backfilling?</p> <p>6 A. I don't recall.</p> <p>7 Q. The only way you would know that 8 is if you had someone go into their facilities 9 and see that; right?</p> <p>10 MR. BARNES: Object to the form.</p> <p>11 THE WITNESS: We never ever have 12 had anyone go to any of our competitor's 13 facility without their knowledge of it. You 14 don't do that in the egg business.</p> <p>15 BY MR. STUEVE:</p> <p>16 Q. What were you referring to when 17 you said industry spies at work?</p> <p>18 A. Someone must have called me or 19 something. Rumor mill again. There's always 20 people yakking.</p> <p>21 Q. Well, you felt it was substantial 22 enough to report it to Gene Gregory; right?</p>	<p style="text-align: right;">599</p> <p>1 from Chad Gregory to Chad Gregory, subject: 2 Klippen; right?</p> <p>3 A. That's what it shows.</p> <p>4 Q. And then attached is the egg 5 newsletter dated October 16, 2006; is that 6 right?</p> <p>7 A. I see that. Yes.</p> <p>8 Q. And then it looks like there's a 9 long -- then just kind of cut and pasted of -- 10 cut and pasted the egg newsletter. Is that what 11 it looks like it follows?</p> <p>12 A. I have no idea what it is.</p> <p>13 Q. You would agree with me that under 14 that 360 under the --</p> <p>15 A. Under here and I have no idea what 16 it is.</p> <p>17 Q. It looks like it comes under the 18 egg newsletter; okay?</p> <p>19 A. I have no knowledge.</p> <p>20 Q. All right. Now, this is -- let's 21 go back to the first page. It says Marcus, this 22 is down at the bottom now.</p>
<p style="text-align: right;">598</p> <p>1 A. Yeah. Correct. 2 (Rust Exhibit Number 566 was 3 marked for identification.)</p> <p>4 BY MR. STUEVE:</p> <p>5 Q. Show you what's been marked as 6 566. UE 0707359 through 365. Here you go.</p> <p>7 Let me -- this is a long e-mail 8 chain. You don't have to read all of it. I'll 9 direct you to the portions and then you read as 10 much as you need to answer my question.</p> <p>11 If you'll look there is on the 12 first page of 566, at the top there's an e-mail 13 from Chad Gregory to you; is that right?</p> <p>14 A. Very top one. Yeah.</p> <p>15 Q. And then below that is an e-mail 16 from you to Chad Gregory Re: Klippen and 17 Sparboe; right?</p> <p>18 A. Yeah.</p> <p>19 Q. And there is below that an e-mail 20 from Chad Gregory to you; right?</p> <p>21 A. That's what it appears.</p> <p>22 Q. And then on the next page there is</p>	<p style="text-align: right;">600</p> <p>1 It says, "rumor has it that Ken 2 Klippen and Sparboe." Did he work for Sparboe 3 at the time?</p> <p>4 A. I don't recall.</p> <p>5 Q. "Rumor has it that Ken Klippen and 6 Sparboe are saying you are supportive of this 7 new organization being formed and you're going 8 to the October 30th meeting in Chicago." Do you 9 see that?</p> <p>10 A. Uh-huh.</p> <p>11 Q. What was he referring to with 12 respect to the new organization?</p> <p>13 A. That's what I'm looking at here.</p> <p>14 Okay. What was your question again?</p> <p>15 Q. It says, "rumor has it that Ken 16 Klippen and Sparboe are saying you are 17 supportive of this new organization being 18 formed." Do you remember what he was referring 19 to?</p> <p>20 A. What he?</p> <p>21 Q. Chad said, "hey, rumor has it that 22 you're supportive of this new organization that</p>

HIGHLY CONFIDENTIAL

Rust, Marcus - Vol. II

March 6, 2014

59 (Pages 601 to 604)

<p style="text-align: right;">601</p> <p>1 Sparboe is organizing." Do you remember what he</p> <p>2 was referring to?</p> <p>3 A. No. I don't remember what that</p> <p>4 was.</p> <p>5 Q. This would have been, though, at</p> <p>6 around the time you were aware of they were</p> <p>7 setting -- they had left the UEP certified</p> <p>8 program; right?</p> <p>9 A. Yeah. They were trying to</p> <p>10 establish another new program. Yes.</p> <p>11 Q. An animal welfare program?</p> <p>12 A. Correct.</p> <p>13 Q. And Chad Gregory of UEP was making</p> <p>14 you -- was bringing this rumor to your attention</p> <p>15 and asking if, in fact, you were supportive of</p> <p>16 this new animal welfare program; right?</p> <p>17 A. I was not.</p> <p>18 Q. Yeah, but he asked you if you</p> <p>19 were; right?</p> <p>20 A. What it says here.</p> <p>21 Q. Okay. And then you respond. You</p> <p>22 say, "no, I was not invited. I might have went,</p>	<p style="text-align: right;">603</p> <p>1 A. Not specifically, but there was.</p> <p>2 Q. Was there anyone else in the UEP</p> <p>3 certified program besides you in which Michael</p> <p>4 Foods was a significant competitor?</p> <p>5 A. Ask the question again.</p> <p>6 Q. Was there anyone else in the UEP</p> <p>7 certified program in which Michaels Foods was a</p> <p>8 significant competitor on the egg product side?</p> <p>9 A. They was -- they had half or</p> <p>10 better of the market. So they were</p> <p>11 significantly bigger than anybody in the product</p> <p>12 business.</p> <p>13 Q. Now, you go up here, Chad Gregory</p> <p>14 responds back and says, "let's stay in</p> <p>15 communication. I think we can work through a</p> <p>16 lot of this without going out and starting a new</p> <p>17 organization and a new animal welfare program.</p> <p>18 That would only divide the industry even more;"</p> <p>19 right?</p> <p>20 A. Yes.</p> <p>21 Q. Now, if animal welfare was what</p> <p>22 was supposedly behind the United Egg Producers</p>
<p style="text-align: right;">602</p> <p>1 but do not believe we need a separate program."</p> <p>2 Do you see that?</p> <p>3 A. Yeah.</p> <p>4 Q. Then you go on to say, "but I am</p> <p>5 one, along with several others, who are</p> <p>6 extremely frustrated now that UEP has endorsed</p> <p>7 Michaels to sell certified alongside</p> <p>8 noncertified."</p> <p>9 That, again, is referring to the</p> <p>10 fact that they got an exception to the</p> <p>11 100 percent rule; right?</p> <p>12 A. They got allowed to have chickens</p> <p>13 both ways through their contract situation.</p> <p>14 Q. Now, you said you, along with</p> <p>15 several others. Who else that you were aware of</p> <p>16 was upset by that?</p> <p>17 A. I'm trying to remember. There</p> <p>18 were several. Probably would have been other</p> <p>19 potential people in the same position we were</p> <p>20 in, breaking and grading.</p> <p>21 Q. Now, you can't remember anybody</p> <p>22 specifically?</p>	<p style="text-align: right;">604</p> <p>1 certified program, what would be the problem</p> <p>2 with having a separate animal welfare program?</p> <p>3 A. There were people who wanted to do</p> <p>4 it all different ways. They wanted to have</p> <p>5 chickens this way, squeezed. These chickens</p> <p>6 this way and these chickens this way. How can</p> <p>7 you promote animal welfare if you're not going</p> <p>8 to treat all your animals the same.</p> <p>9 Q. That's not my question. My</p> <p>10 question is what's the problem with having a</p> <p>11 different animal welfare program than the UEP</p> <p>12 certified program in the egg industry?</p> <p>13 A. The programs they were promoting</p> <p>14 were ones that would allow you to have one</p> <p>15 program here, another program here, another</p> <p>16 program here, however the customer dictated and</p> <p>17 the FMI -- what the customers wanted was they</p> <p>18 wanted all of us producers to have the same</p> <p>19 level playing field so they could get</p> <p>20 competitive bids from the group as a whole.</p> <p>21 They didn't want people having all</p> <p>22 these different programs. They didn't want</p>

HIGHLY CONFIDENTIAL

Rust, Marcus - Vol. II

March 6, 2014

60 (Pages 605 to 608)

<p style="text-align: right;">605</p> <p>1 Hy-Vee having one program, Ingles having another 2 program, Kroger having another program. Then 3 all of a sudden you had all these people with 4 different sets of rules for everybody. Every 5 chicken this state one way, that state another 6 way. 7 Q. You were opposed to the animal 8 welfare program that Sparboe was proposing 9 because it did not have 100 percent rule, fair 10 enough? 11 A. No. Not fair enough. I was 12 opposed to the program because it was not 13 treating the animals the same. 14 Q. That's meaning they didn't have 15 100 percent requirement; right? 16 A. They were going to squeeze some 17 chickens for one customer, give extra space to 18 other chickens for another customer. They only 19 cared about making profits. I was in this to 20 stay in the egg business. I didn't want to get 21 our business shut down like my good friend Frank 22 Zimmer in Germany had his business, what do you</p>	<p style="text-align: right;">607</p> <p>1 THE WITNESS: No. I do not 2 believe they believed it was anticompetitive. 3 They believed that they had -- it was a 4 business's right to go out and produce eggs and 5 squeeze animals -- they wanted the ability to 6 have animals at 45 inches for one company, 60 or 7 whatever inches was for the UEP standard for 8 that company and 80 or whatever it was for 9 McDonald's. 10 BY MR. STUEVE: 11 Q. Sir, if you look at Exhibit 566, 12 Marcus -- right on the first page it says -- it 13 says, "remember, they are still upset about the 14 UEP program being 100 percent;" right? 15 A. Which page? 16 Q. On the very first page. 17 A. Yes. 18 Q. They want it to be customer 19 driven; right? 20 A. They want it to be customer driven 21 by client. 22 Q. Not mandated by the industry</p>
<p style="text-align: right;">606</p> <p>1 call it, voted away by the politicians in that 2 country. Same damn thing could happen here. 3 Q. When you're referring to the fact 4 they were going to treat chickens differently, 5 that, in fact, is the 100 percent rule; right? 6 You wanted them to be in an animal welfare 7 program that required all of their facilities 8 to -- and any eggs that they marketed to be 9 certified? 10 MR. BARNES: Object to the form. 11 BY MR. STUEVE: 12 Q. Is that correct, sir? 13 MR. BARNES: Marcus, wait until he 14 finishes his question before you answer. I 15 object to the form. Now he can go ahead and 16 answer it. 17 BY MR. STUEVE: 18 Q. Sir, you -- the reason why Sparboe 19 left is they believed that the 100 percent 20 requirement that we've been talking about was 21 anticompetitive; correct? 22 MR. BARNES: Object to form.</p>	<p style="text-align: right;">608</p> <p>1 organization; correct, sir? 2 A. They didn't want it to be a moral 3 standard set by the animal husbandry standards 4 of the egg industry. 5 Q. Right. And then you go on and you 6 say, "in fact, you're frustrated that the 7 100 percent rule wasn't applied to Michael 8 Foods;" right? That's in your next e-mail; 9 right? 10 A. Yeah. 11 MR. BARNES: Object to the form. 12 BY MR. STUEVE: 13 Q. And then he responds back and 14 says, "look, we're both in agreement that we 15 don't want a divided industry and have a new 16 animal welfare program;" correct? 17 MR. BARNES: Object to the form. 18 THE WITNESS: Which one are you 19 referring to now? 20 BY MR. STUEVE: 21 Q. The very top e-mail. 22 A. Okay. What are you saying?</p>

HIGHLY CONFIDENTIAL

Rust, Marcus - Vol. II

March 6, 2014

61 (Pages 609 to 612)

<p style="text-align: right;">609</p> <p>1 Q. He's writing back to you and</p> <p>2 saying, "look, we're both in agreement, we don't</p> <p>3 want a new animal welfare program;" right?</p> <p>4 MR. BARNES: Object to the form.</p> <p>5 THE WITNESS: That's what it says.</p> <p>6 BY MR. STUEVE:</p> <p>7 Q. Okay. Show you what's previously</p> <p>8 been marked as Exhibit 305.</p> <p>9 Do you remember receiving</p> <p>10 Exhibit 305, sir?</p> <p>11 A. I don't remember receiving it.</p> <p>12 No.</p> <p>13 Q. It says, "I've chosen a select few</p> <p>14 of you to receive this e-mail and request your</p> <p>15 help." This is from Gene Gregory, one of the</p> <p>16 leaders of UEP; correct?</p> <p>17 A. Yeah.</p> <p>18 Q. This was at the time that Sparboe</p> <p>19 was developing this alternative animal welfare</p> <p>20 program; right?</p> <p>21 A. Yeah.</p> <p>22 Q. And it specifically referenced</p>	<p style="text-align: right;">611</p> <p>1 Q. This was UEP reaching out to you</p> <p>2 and several other egg producers and encouraging</p> <p>3 you to contact USDA and objecting to the USDA</p> <p>4 allowing Sparboe to use the USDA process</p> <p>5 verified program; right?</p> <p>6 MR. BARNES: Object to form.</p> <p>7 THE WITNESS: What are you asking</p> <p>8 again now?</p> <p>9 BY MR. STUEVE:</p> <p>10 Q. If you look at the last paragraph</p> <p>11 it says, "Dolph Baker, our Washington, D.C. team</p> <p>12 and I have been meeting with the Administrator</p> <p>13 Day on August 15th to discuss this. We need</p> <p>14 your thoughts. Would you please send me a fresh</p> <p>15 e-mail, not respond on this one, and/or</p> <p>16 preferably a letter on your letterhead stating</p> <p>17 your position. Also answering the questions we</p> <p>18 posed above. We need this as soon as possible.</p> <p>19 Please do not share this with anyone else.</p> <p>20 Thanks for any help you can provide." Did I</p> <p>21 read that correctly?</p> <p>22 A. That's the way it reads. I don't</p>
<p style="text-align: right;">610</p> <p>1 there, "you are aware we have expressed concerns</p> <p>2 with USDA for allowing USDA process -- program</p> <p>3 to be used for a producer to convey a marketing</p> <p>4 message of animal welfare when the producer does</p> <p>5 not apply science based animal welfare</p> <p>6 guidelines on 100 percent of their production</p> <p>7 flocks." Do you see that?</p> <p>8 A. Yeah.</p> <p>9 Q. And that was specifically</p> <p>10 targeting Sparboe; correct?</p> <p>11 MR. BARNES: Object to the form.</p> <p>12 THE WITNESS: I don't know. I'm</p> <p>13 trying to see who it was targeting. I don't</p> <p>14 know who it was targeting.</p> <p>15 BY MR. STUEVE:</p> <p>16 Q. Well, were you aware of anyone</p> <p>17 other than Sparboe that was conveying a</p> <p>18 marketing message of animal welfare when their</p> <p>19 producer does not apply science based animal</p> <p>20 welfare guidelines on 100 percent of their</p> <p>21 production flocks?</p> <p>22 A. I don't remember. I don't recall.</p>	<p style="text-align: right;">612</p> <p>1 recall.</p> <p>2 Q. You don't recall receiving this?</p> <p>3 A. I could have. I don't recall this</p> <p>4 specific. Did I respond to it? I don't</p> <p>5 remember.</p> <p>6 Q. If you look at the second to the</p> <p>7 last paragraph on the first page it says --</p> <p>8 Mr. Rust, if you can look at the second to last</p> <p>9 paragraph on the first page.</p> <p>10 A. Oh, first page.</p> <p>11 Q. At the bottom there, "I'm afraid</p> <p>12 that this program has a good chance of</p> <p>13 undermining the UEP certified program. Already</p> <p>14 we've seen evidence that a producer is</p> <p>15 misstating that he has the PVP program and is</p> <p>16 trying to take a rather large account away from</p> <p>17 an UEP certified company." Do you see that?</p> <p>18 A. Yeah.</p> <p>19 Q. And that was referring to Sparboe;</p> <p>20 correct, sir?</p> <p>21 A. I have no idea. I assume that.</p> <p>22 Q. And do you remember the large</p>

HIGHLY CONFIDENTIAL

Rust, Marcus - Vol. II

March 6, 2014

62 (Pages 613 to 616)

<p style="text-align: right;">613</p> <p>1 account that Sparboe was attempting to take from 2 a UEP certified company? 3 A. From this e-mail, I'm not sure who 4 it would be. 5 Q. Did you contact Mr. Gregory after 6 receiving this? 7 A. I don't recall. 8 (Rust Exhibit Number 567 was 9 marked for identification.) 10 BY MR. STUEVE: 11 Q. Show you what's been marked as 12 Exhibit 567. This is RAUPDATE 80438 through 40. 13 Do you still have Exhibit 305 in 14 front of you, sir? 15 A. Yeah. 16 Q. Where is that? Keep it right next 17 to you, will you, sir. If you look back to 305, 18 Exhibit 305 for a minute, sir. 19 That date of that letter or e-mail 20 from Gene Gregory is August 3rd, 2007; right? 21 A. What about it? 22 Q. Can you confirm that?</p>	<p style="text-align: right;">615</p> <p>1 A. Greg might have asked him. And I 2 might have. I don't recall it. 3 Q. If you go back to Exhibit 305, is 4 there anyone else copied from Rose Acre, other 5 than you? 6 A. No. 7 Q. Does that refresh your 8 recollection, sir, that you were the one after 9 receiving Mr. Gregory's e-mail you asked the 10 in-house lawyer for Rose Acre to prepare the 11 letter? 12 A. I evidently did. I don't recall 13 it though. 14 MR. BARNES: I'm going to 15 object -- excuse me, counsel. Can I frame an 16 objection for the record? 17 MR. STUEVE: You're objecting to a 18 question or? 19 MR. BARNES: I'm objecting to use 20 of this document. It appears to be a first 21 amendment protected petition to the U.S. 22 Government, which is protected activity. And I</p>
<p style="text-align: right;">614</p> <p>1 A. Yeah. 2 Q. And then Exhibit 567 is dated 3 four days later, August 7th, 2007; is that 4 correct? 5 A. Yeah. 6 Q. And it's an e-mail from Joe 7 Miller, who would be the general counsel of Rose 8 Acre; right? 9 A. Yeah. 10 Q. To Gene Gregory. Subject: Letter 11 to USDA concerning shield. Do you see that? 12 A. Yes. 13 Q. And it copies you; right? 14 A. It's copied to me. I don't 15 believe I read it. 16 Q. As well as Greg Hinton; right? 17 A. Yes. 18 Q. In fact, you would have asked your 19 in-house lawyer to prepare that letter; correct? 20 A. Not necessarily. 21 Q. How else would he have known about 22 it, sir?</p>	<p style="text-align: right;">616</p> <p>1 think it's improper to use this -- this 2 particular protected communication to try to 3 imply any type of wrongdoing on the part of 4 anybody. 5 BY MR. STUEVE: 6 Q. Now, it says, "attached is a 7 letter you can take with you on your upcoming 8 meeting with USDA." And Mr. Miller is referring 9 to the meeting that was referenced in 10 Mr. Gregory's August 3rd e-mail; right? 11 A. Yeah. 12 Q. "Attached is the letter you can 13 take with you on your upcoming meeting with USDA 14 concerning the use of the shield with programs 15 that have less than 100 percent participation. 16 This letter is similar to the one we sent to 17 Mr. Day on January 22nd, 2007." Did I read that 18 correctly? 19 A. That's what it says. 20 Q. So had you already notified the 21 USDA of your complaints that Sparboe was using 22 the PVP -- process verified program? Do you</p>

HIGHLY CONFIDENTIAL

Rust, Marcus - Vol. II

March 6, 2014

63 (Pages 617 to 620)

<p style="text-align: right;">617</p> <p>1 remember?</p> <p>2 A. I don't remember. Where does it</p> <p>3 say Sparboe?</p> <p>4 Q. And then, sir --</p> <p>5 A. I said where does it say Sparboe?</p> <p>6 Q. I asked you earlier if you</p> <p>7 believed that the one -- the entity -- the</p> <p>8 example that was given in Gene Gregory's e-mail,</p> <p>9 if you believed that was Sparboe. Do you</p> <p>10 remember that?</p> <p>11 A. No. Which one was that?</p> <p>12 Q. Sir, if you could, if you could</p> <p>13 look at 569 and attached to the e-mail from Joe</p> <p>14 Miller to Gene Gregory, which you're copied on,</p> <p>15 is that, in fact, the letter?</p> <p>16 A. Is that, in fact, which letter?</p> <p>17 Q. The letter that is referenced in</p> <p>18 the e-mail on the first page of 569?</p> <p>19 A. I would assume it would be.</p> <p>20 Q. You state in this letter that --</p> <p>21 A. I have to read the letter first.</p> <p>22 Q. Okay.</p>	<p style="text-align: right;">619</p> <p>1 Q. And the example you were aware of</p> <p>2 was Sparboe?</p> <p>3 MR. BARNES: Objection.</p> <p>4 THE WITNESS: Yes. That would</p> <p>5 have been one of them.</p> <p>6 BY MR. STUEVE:</p> <p>7 Q. Can you name anyone else that you</p> <p>8 can think of?</p> <p>9 A. I think DeCoster was doing the</p> <p>10 same thing.</p> <p>11 Q. Okay. And those would have been</p> <p>12 two principal competitors of Rose Acre?</p> <p>13 A. Correct.</p> <p>14 Q. And you go on to state in the</p> <p>15 second paragraph there -- Mr. Miller, general</p> <p>16 counsel for Rose Acre, states in the second</p> <p>17 paragraph towards the end, "in order to comply</p> <p>18 with these requirements, Rose Acre Farms reduced</p> <p>19 the number of birds per cage, which has amounted</p> <p>20 to a reduction of literally millions of birds</p> <p>21 from our operation." Did I read that correctly?</p> <p>22 A. Yeah.</p>
<p style="text-align: right;">618</p> <p>1 MR. BARNES: Pat, it's 567.</p> <p>2 You're going forward. You've been calling it</p> <p>3 569.</p> <p>4 MR. STUEVE: I wrote it wrong.</p> <p>5 Okay.</p> <p>6 THE WITNESS: Okay. What about</p> <p>7 it?</p> <p>8 BY MR. STUEVE:</p> <p>9 Q. Does the August 7, 2007 letter</p> <p>10 that was prepared by Joseph Miller, general</p> <p>11 counsel of Rose Acre Farms, is that the letter</p> <p>12 that appears to be attach to the e-mail that's</p> <p>13 on the first page of Exhibit 567?</p> <p>14 A. Yes. It does.</p> <p>15 Q. And in the very first sentence to</p> <p>16 the USDA it says, "it is our understanding that</p> <p>17 USDA has decided to proceed with a program that</p> <p>18 allows companies and individuals to place the</p> <p>19 USDA shield on their products when they have</p> <p>20 only partial production involved in their</p> <p>21 operation."</p> <p>22 A. Yes.</p>	<p style="text-align: right;">620</p> <p>1 Q. Was that an accurate statement,</p> <p>2 sir?</p> <p>3 A. No.</p> <p>4 Q. That -- okay.</p> <p>5 A. We added birds all the time.</p> <p>6 Q. So the representation made by</p> <p>7 general counsel of Rose Acre to the USDA in this</p> <p>8 August 27, 2007 letter was just simply flat</p> <p>9 false?</p> <p>10 A. You're trying to twist it around</p> <p>11 and say something that didn't take place.</p> <p>12 Q. If you could read back my question</p> <p>13 and I ask you to answer it for me.</p> <p>14 (The record was read as</p> <p>15 requested.)</p> <p>16 THE WITNESS: Yes and no.</p> <p>17 (Rust Exhibit Number 568 was</p> <p>18 marked for identification.)</p> <p>19 BY MR. STUEVE:</p> <p>20 Q. Let me show you what's been marked</p> <p>21 Exhibit 568, it's RA 004766 through 70.</p> <p>22 And this is RA 004766 through 70,</p>

HIGHLY CONFIDENTIAL

Rust, Marcus - Vol. II

March 6, 2014

64 (Pages 621 to 624)

<p style="text-align: right;">621</p> <p>1 Exhibit 568. This was produced by Rose Acre, 2 you can tell by the Bates range; is that 3 correct? 4 A. That's what it says at the bottom. 5 Correct. 6 Q. And this is a letter sent on 7 behalf of UEP, United Egg Producers, to 8 Wal-Mart; right? 9 A. Yeah. 10 Q. And it says at the request of Ron 11 Whaley at CCF Brands. What is CCF brands? 12 A. Country Creek Farms Brand. 13 Q. Right. They were not a UEP 14 member; right? 15 A. I'm not sure. 16 Q. They were the broker for Wal-Mart; 17 right? 18 A. I think they call them category 19 advisor, but I don't know what that really 20 means. 21 Q. Okay. They're not an egg 22 producer; right?</p>	<p style="text-align: right;">623</p> <p>1 nonUEP certified member that is offering -- that 2 was making these claims other than Sparboe, that 3 you're aware of? 4 A. There may have been several. I 5 don't recall. 6 Q. The only ones -- the only one you 7 can recall is Sparboe; right? 8 A. I recollect them as a company. 9 Q. You would have been a Board member 10 of UEP at this time, as well; correct? 11 A. Yeah. 12 Q. If you look at the -- if you look 13 at the last paragraph there on the very first 14 page it says, it is for this reason -- excuse 15 me. 16 "Wal-Mart is the largest retail 17 buyer of eggs. Your company has always been the 18 strongest supporter of UEP program among all 19 retailers. It is for this reason we are 20 providing this information in hopes that you 21 will continuing requiring your egg suppliers to 22 implement this program on 100 percent of --"</p>
<p style="text-align: right;">622</p> <p>1 A. They have been. 2 Q. In July of 2008 they were not an 3 egg producer; were they, sir? 4 A. I don't know if they were an egg 5 producer or not an egg producer. 6 Q. "At the request of Ron Whaley at 7 CCF Brands, we are providing the attached report 8 of our assessment of the UEP certified program 9 in comparison to the limited information 10 available on an individual egg producer program 11 that is offering the verification by USDA 12 process verified program, PVP." Do you see 13 that? 14 A. That's what it says. 15 Q. And, again, this is targeting 16 Sparboe; correct, sir? 17 MR. BARNES: Object to form. 18 THE WITNESS: I'm not sure who 19 it's targeting. Does it say that here 20 someplace? 21 BY MR. STUEVE: 22 Q. Are you, sir, is there any other</p>	<p style="text-align: right;">624</p> <p>1 (Interruption.) 2 BY MR. STUEVE: 3 Q. Let me start over. Would you look 4 at that last paragraph there. It says, 5 "Wal-Mart is the largest retail buyer of eggs. 6 Your company has always been the strongest 7 supporter of UEP program among all retailers. 8 It is for this reason we are providing this 9 information in hopes that you will continue 10 requiring your egg suppliers to implement this 11 program on 100 percent of an egg suppliers owned 12 and contracted production." Do you see that? 13 A. Yeah. 14 Q. Again, this was specifically 15 urging Wal-Mart not to do business with a 16 noncertified company; correct, sir? 17 MR. BARNES: Object to the form of 18 the question. 19 THE WITNESS: That may be your 20 interpretation. I'm not sure. 21 BY MR. STUEVE: 22 Q. Now, how did you end up with a</p>

HIGHLY CONFIDENTIAL

Rust, Marcus - Vol. II

March 6, 2014

65 (Pages 625 to 628)

<p style="text-align: right;">625</p> <p>1 copy of this, sir?</p> <p>2 A. Probably through our sales</p> <p>3 department. I don't know.</p> <p>4 Q. Did the sales department use this</p> <p>5 letter as part of their marketing efforts?</p> <p>6 A. I have no idea.</p> <p>7 Q. Why would the sales department</p> <p>8 have it?</p> <p>9 MR. BARNES: Object to the form.</p> <p>10 THE WITNESS: I have no idea. Do</p> <p>11 we know who the custodian was?</p> <p>12 BY MR. STUEVE:</p> <p>13 Q. Sir, you've testified repeatedly</p> <p>14 that the reason why you joined UEP certified was</p> <p>15 that FMI was really pushing this on egg</p> <p>16 producers; is that correct?</p> <p>17 MR. BARNES: Object to the form.</p> <p>18 THE WITNESS: I don't know what</p> <p>19 FMI was -- they was -- my understanding, we was</p> <p>20 led to believe they was the group that through</p> <p>21 Wal-Mart, Kroger, the various people that said</p> <p>22 on some committee there had asked the United Egg</p>	<p style="text-align: right;">627</p> <p>1 member of UEP at this time; correct?</p> <p>2 MR. BARNES: Objection to form.</p> <p>3 Go ahead and answer.</p> <p>4 THE WITNESS: I think I was.</p> <p>5 Yeah.</p> <p>6 BY MR. STUEVE:</p> <p>7 Q. Do you know who the National</p> <p>8 Council of Chain Store Restaurants, what that</p> <p>9 is?</p> <p>10 A. Yeah. It was one of the</p> <p>11 organizations for the restaurant association or</p> <p>12 something.</p> <p>13 Q. Does it have any affiliation with</p> <p>14 FMI?</p> <p>15 A. My understanding it did.</p> <p>16 Q. Okay.</p> <p>17 A. Of some type.</p> <p>18 Q. And this is a letter, it says, "we</p> <p>19 were shocked and dismayed with your response to</p> <p>20 my letter of September 16th." Do you see that?</p> <p>21 A. Yeah.</p> <p>22 Q. It says, "UEP and its Board</p>
<p style="text-align: right;">626</p> <p>1 Producers to come up with a program to get the</p> <p>2 animal rights activists off their backs.</p> <p>3 (Rust Exhibit Number 569 was</p> <p>4 marked for identification.)</p> <p>5 BY MR. STUEVE:</p> <p>6 Q. Sir, I'm going to show you what's</p> <p>7 been marked as Exhibit 569. Its Bates range FMI</p> <p>8 000284 to 285.</p> <p>9 A. Is there another Exhibit 569?</p> <p>10 MR. STUEVE: Actually, yeah. Give</p> <p>11 me that. I did my favorite trick here. I show</p> <p>12 you what's been marked as 569.</p> <p>13 This would have been -- this is a</p> <p>14 United Egg Producers letter to Ms. Terrie Dort,</p> <p>15 the National Council of Chain Store Restaurants.</p> <p>16 Do you know who she is?</p> <p>17 THE WITNESS: No.</p> <p>18 BY MR. STUEVE:</p> <p>19 Q. This was written by Gene -- excuse</p> <p>20 me. Al Pope, president; is that correct?</p> <p>21 A. That's what it says. Yeah.</p> <p>22 Q. And you would have been a Board</p>	<p style="text-align: right;">628</p> <p>1 members have worked extremely hard in developing</p> <p>2 our animal care program." Did I read that</p> <p>3 correctly?</p> <p>4 A. Yeah.</p> <p>5 Q. "A program science based and</p> <p>6 developed to protect our industry's egg</p> <p>7 producers, members of NCCR, FMI and other</p> <p>8 industry customers." Do you see that?</p> <p>9 A. Yeah.</p> <p>10 Q. And at the bottom of the letter it</p> <p>11 says, "the adoption of the program by nearly</p> <p>12 80 percent of shell egg producers has been a</p> <p>13 revolutionary event and I want to stress this,</p> <p>14 Terrie, it has only been accomplished because</p> <p>15 producers themselves have agreed to each of the</p> <p>16 various parts of the program, the guidelines,</p> <p>17 the third-party audit, the dispute resolution</p> <p>18 system, et cetera. In other words, from day one</p> <p>19 this has been a shell egg producer self-driven</p> <p>20 program." Did I read that correctly?</p> <p>21 A. That's what that says. Yeah.</p> <p>22 Q. Did you have a chance to review</p>

HIGHLY CONFIDENTIAL

Rust, Marcus - Vol. II

March 6, 2014

66 (Pages 629 to 632)

<p style="text-align: right;">629</p> <p>1 this letter before it was sent out by Mr. Pope?</p> <p>2 A. No. I'm not sure I ever saw it.</p> <p>3 (Rust Exhibit Number 570 was</p> <p>4 marked for identification.)</p> <p>5 BY MR. STUEVE:</p> <p>6 Q. Show you what's been marked as</p> <p>7 Exhibit 570, which is Bates stamped UE 0295185.</p> <p>8 A. Okay.</p> <p>9 Q. Do you remember reviewing this</p> <p>10 document?</p> <p>11 A. No.</p> <p>12 Q. Were you aware of the -- of this</p> <p>13 issue?</p> <p>14 A. Not particularly. I don't</p> <p>15 remember it.</p> <p>16 Q. It says in the first paragraph,</p> <p>17 "this is a letter from SES Inc. to Gene Gregory,</p> <p>18 senior vice-president of United Egg Producers;"</p> <p>19 correct?</p> <p>20 A. That's what it says.</p> <p>21 Q. It says, "I would like to clarify</p> <p>22 several issues relative to the animal welfare</p>	<p style="text-align: right;">631</p> <p>1 sales department.</p> <p>2 Q. Who at the sales department told</p> <p>3 you that in March of 2002 customers were</p> <p>4 demanding the UEP certified program?</p> <p>5 A. Greg Hinton.</p> <p>6 Q. Greg Hinton did?</p> <p>7 A. Yeah.</p> <p>8 Q. Now, the next paragraph says, "the</p> <p>9 first issue involves the role of my company, SES</p> <p>10 Inc., in this program." Are you familiar with</p> <p>11 SES?</p> <p>12 A. No.</p> <p>13 Q. "SES Inc. is the program</p> <p>14 administrator. As such we interact with FMI and</p> <p>15 NCCR, as well as the program's Technical</p> <p>16 Advisory Committee." Did I read that correctly?</p> <p>17 A. That's what it says. Yeah. I</p> <p>18 think you did.</p> <p>19 Q. Then it states, "we develop and</p> <p>20 implement training and conducting AWAP audits.</p> <p>21 We provide quality assurance and quality control</p> <p>22 for the program. We maintain the program</p>
<p style="text-align: right;">630</p> <p>1 audit program, AWAP, developed by the National</p> <p>2 Council of Chain Restaurants, NCCR and FMI."</p> <p>3 A. Yeah.</p> <p>4 Q. Are you familiar with AWAP?</p> <p>5 A. Not particularly. No. I can't</p> <p>6 identify it.</p> <p>7 Q. Did Rose Acre ever consider using</p> <p>8 the animal welfare audit program of FMI?</p> <p>9 A. I don't recollect that we did.</p> <p>10 Q. What is your understanding of the</p> <p>11 animal welfare audit program that FMI sponsors?</p> <p>12 A. I have very little understanding</p> <p>13 other than what program we was asked to use by</p> <p>14 our customers.</p> <p>15 Q. And it's your testimony that,</p> <p>16 again, that your customers specifically</p> <p>17 requested the UEP certified program; right?</p> <p>18 A. Correct.</p> <p>19 Q. But you can't point to me any</p> <p>20 document that you recall reviewing in</p> <p>21 preparation of your deposition today; correct?</p> <p>22 A. I know what I was told by our</p>	<p style="text-align: right;">632</p> <p>1 database and we interact with the auditing</p> <p>2 community." Did I read that correctly?</p> <p>3 A. Yes.</p> <p>4 Q. "AWAP is a NCCR and FMI program,</p> <p>5 not an SES program. Please refrain from stating</p> <p>6 AWAP is an SES program." Did I read that</p> <p>7 correctly?</p> <p>8 A. Yeah.</p> <p>9 Q. It says, "the second issue deals</p> <p>10 with the relationship between the AWAP audit and</p> <p>11 the United Egg Producers UEP animal care</p> <p>12 certified audit." Do you see that?</p> <p>13 A. Yes.</p> <p>14 Q. "In the spring of 2003 UEP</p> <p>15 informed SES, NCCR and FMI it would accept an</p> <p>16 AWAP audit in lieu of an animal care certified</p> <p>17 audit for those operations wishing to achieve or</p> <p>18 maintain their animal care certified status.</p> <p>19 Did I read that correctly?</p> <p>20 A. Yeah.</p> <p>21 Q. "Neither NCCR nor FMI have</p> <p>22 determined that an animal care certified audit</p>

HIGHLY CONFIDENTIAL

Rust, Marcus - Vol. II

March 6, 2014

67 (Pages 633 to 636)

<p style="text-align: right;">633</p> <p>1 is equivalent to or should replace an AWAP 2 audit. Suggesting equivalency is misleading and 3 incorrect." Did I read that correctly? 4 A. Yes. That's what it says. 5 MR. BARNES: Object to the form 6 and the question. This is a gross waste of 7 time. The document speaks for itself. You've 8 sat here and read every line of a document that 9 this witness has indicated he has not seen 10 before. It was not addressed to him. There is 11 no indication that even Rose Acre received this 12 letter. You sat here and you read every line. 13 The document speaks for itself. This is a gross 14 waste of time and we -- you know, we've been 15 very patient. You've done this repeatedly 16 throughout this deposition, but the document 17 speaks for itself. If the witness has seen it 18 or if you have a specific question, but to sit 19 here and read sentence after sentence and ask 20 the witness if that's what the document says, I 21 object to that procedure. 22 BY MR. STUEVE:</p>	<p style="text-align: right;">635</p> <p>1 MR. BARNES: Same objection. 2 THE WITNESS: I have no idea. 3 BY MR. STUEVE: 4 Q. How long have you sat on the 5 Board, sir? 6 A. At this time? 7 Q. No. Up through today? 8 A. This was 2003. 9 Q. Right. But you sat on the Board 10 for over a decade; right? 11 A. 12 years. 12 Q. Based on your experience serving 13 on the Board for over a decade, you would expect 14 that a senior VP of UEP would bring to the 15 Board's attention a letter accusing UEP of 16 engaging in misleading and incorrect statements; 17 correct? 18 MR. BARNES: Object to the form. 19 THE WITNESS: I have no idea. 20 MR. STUEVE: Why don't we take a 21 break. 22 THE VIDEOGRAPHER: Off the record</p>
<p style="text-align: right;">634</p> <p>1 Q. Sir, you sat on the Board of UEP 2 in September of 2003; correct? 3 A. Yeah. 4 MR. BARNES: I object. That 5 doesn't prove anything as far as this document 6 is concerned and as far as your reading every 7 sentence. 8 BY MR. STUEVE: 9 Q. Did Mr. Gregory bring to the 10 Board's attention the fact that Frank Bryant, 11 the president of SES, believed that UEP was 12 making misleading and incorrect statements? 13 A. I have no recollection of that. 14 Q. This certainly would be something 15 that he would have been expected to bring to the 16 Board; correct? 17 MR. BARNES: Object to the form of 18 the question. 19 THE WITNESS: I have no idea. 20 BY MR. STUEVE: 21 Q. You wouldn't expect him to bring 22 an issue like this before the Board of UEP?</p>	<p style="text-align: right;">636</p> <p>1 at 4:31 p.m. 2 (A brief recess was taken.) 3 THE VIDEOGRAPHER: Back on the 4 record at 4:51 p.m. 5 BY MR. STUEVE: 6 Q. You have in front of you, 7 Mr. Rust, back in front of you Exhibit 517, 8 which is the notice that was served on you in 9 this case? 10 A. Okay. 11 Q. If you could turn to topic number 12 two. You've been designated on behalf of Rose 13 Acre to testify. Do you have topic two in front 14 of you? 15 A. Correct. 16 Q. It says your membership in any 17 cooperative. And then it says including the 18 identity of the cooperative. 19 We've asked you -- I've asked you 20 questions about Rose Acre's participation in 21 United Egg Producers; correct? 22 A. Correct.</p>

HIGHLY CONFIDENTIAL

Rust, Marcus - Vol. II

March 6, 2014

68 (Pages 637 to 640)

<p style="text-align: right;">637</p> <p>1 Q. I've asked you about Rose Acre's</p> <p>2 participation in United States Egg Marketers;</p> <p>3 correct?</p> <p>4 A. Yeah.</p> <p>5 Q. I've asked you questions about the</p> <p>6 Egg Products, Inc. Cooperative; correct?</p> <p>7 A. Correct. It never operated.</p> <p>8 Q. Well, we certainly saw meeting</p> <p>9 minutes; right?</p> <p>10 A. Correct.</p> <p>11 Q. All right. Has Rose Acre been a</p> <p>12 member of any other cooperative?</p> <p>13 A. Not that I recollect.</p> <p>14 Q. Okay. Were there membership</p> <p>15 agreements entered into with respect to the Egg</p> <p>16 Products, Inc. cooperative?</p> <p>17 A. Randon would have had the</p> <p>18 membership agreements; correct.</p> <p>19 Q. Okay. He had prepared those?</p> <p>20 A. Correct.</p> <p>21 Q. With respect to all of the goods</p> <p>22 that Rose Acre is required to purchase to run</p>	<p style="text-align: right;">639</p> <p>1 A. They're cooperatives.</p> <p>2 Q. And do you have to be a member of</p> <p>3 these co-ops in order to purchase from them?</p> <p>4 A. I don't think so.</p> <p>5 Q. Who would know that?</p> <p>6 A. How do you mean?</p> <p>7 Q. Who at Rose Acre would know</p> <p>8 whether or not you have to be members of these</p> <p>9 farm co-ops in order to purchase goods from</p> <p>10 them?</p> <p>11 A. Kent Ford.</p> <p>12 Q. Who?</p> <p>13 A. Kent Ford.</p> <p>14 Q. Who is Kent Ford?</p> <p>15 A. My purchasing agent.</p> <p>16 Q. Where is he located?</p> <p>17 A. At Seymour, Indiana.</p> <p>18 Q. Okay. Do you know, if you look at</p> <p>19 topic number H, 2H, it says, whether you</p> <p>20 purchase goods and services from a cooperative</p> <p>21 and how the prices for such goods or services</p> <p>22 are determined. Do you see that?</p>
<p style="text-align: right;">638</p> <p>1 its business, do you purchase goods from any</p> <p>2 cooperatives?</p> <p>3 A. We may purchase something from a</p> <p>4 cooperative, but we do not -- correct, we do</p> <p>5 purchase from a cooperative.</p> <p>6 Q. Can you tell me which goods or</p> <p>7 services you purchase from cooperatives?</p> <p>8 A. We purchase diesel fuel and fuel</p> <p>9 or gasoline from various cooperatives around our</p> <p>10 location. There would be maybe three or four</p> <p>11 different ones. Fuel -- miscellaneous farm</p> <p>12 goods. We would have a charge account set up at</p> <p>13 the local co-op farm store in Indiana or like</p> <p>14 northern Indiana, Seymour, Indiana.</p> <p>15 Q. In addition to fuel, what types of</p> <p>16 goods would you purchase from these</p> <p>17 cooperatives?</p> <p>18 A. May have been two by fours or, you</p> <p>19 know, just hardware. Miscellaneous. They're</p> <p>20 not co-ops related to the egg business of any</p> <p>21 type.</p> <p>22 Q. But they are cooperatives; right?</p>	<p style="text-align: right;">640</p> <p>1 A. Correct.</p> <p>2 Q. It's my understanding in</p> <p>3 preparation for your deposition today, you did</p> <p>4 not speak with Kent Ford; is that correct?</p> <p>5 A. Correct.</p> <p>6 Q. Okay. Do you know how the prices</p> <p>7 for the fuel, for example, that you purchase</p> <p>8 from these cooperatives is set?</p> <p>9 A. Personally?</p> <p>10 Q. Correct.</p> <p>11 A. No.</p> <p>12 MR. BARNES: I'm going to object</p> <p>13 here because item number 2, you're referring to,</p> <p>14 Mr. Stueve, is all prefaced by the words your</p> <p>15 membership in any cooperative, including. And</p> <p>16 the witness said he doesn't think you have to be</p> <p>17 a member to participate in these supply co-ops.</p> <p>18 What I'm saying is I think you're distorting the</p> <p>19 specification in the 30(b)(6).</p> <p>20 BY MR. STUEVE:</p> <p>21 Q. If you look at J, it says, whether</p> <p>22 the cooperative has buying power and leverages</p>

HIGHLY CONFIDENTIAL

Rust, Marcus - Vol. II

March 6, 2014

69 (Pages 641 to 644)

<p style="text-align: right;">641</p> <p>1 that buying power. Do you see that?</p> <p>2 A. Yes.</p> <p>3 Q. Did you talk to Kent Ford about</p> <p>4 that topic?</p> <p>5 A. No.</p> <p>6 Q. Do you know whether these</p> <p>7 cooperatives that you purchase goods and</p> <p>8 services from, whether or not they engage in</p> <p>9 bulk purchasing, for example, of fuel?</p> <p>10 A. The one owns a refinery.</p> <p>11 Q. Which one is that?</p> <p>12 A. It would be the Jackson Jennings</p> <p>13 -- I forget, is it Country Mart has their --</p> <p>14 what do they call it? It's changed.</p> <p>15 Q. Just do your best?</p> <p>16 A. The co-op. It has --</p> <p>17 Q. Where is the co-op located that</p> <p>18 you're referring to?</p> <p>19 A. It used to be Indianapolis, but</p> <p>20 there's been so many mergers, I'm not sure where</p> <p>21 their offices are located at today.</p> <p>22 Q. Where are their facilities located</p>	<p style="text-align: right;">643</p> <p>1 eligible to receive any patronage from these</p> <p>2 co-ops, based on the purchases that you make?</p> <p>3 A. There may be, there may not. I'm</p> <p>4 not sure.</p> <p>5 Q. Would Kent Ford be the one who</p> <p>6 would know that?</p> <p>7 A. Kent Ford would know that.</p> <p>8 Q. Topic number 3. It says, your</p> <p>9 membership in any group purchasing organization?</p> <p>10 A. No.</p> <p>11 Q. Who would know that at Rose Acre?</p> <p>12 MR. BARNES: Object to form of the</p> <p>13 question. I think you misunderstood the</p> <p>14 witness's answer when he said no. Please go</p> <p>15 ahead and ask.</p> <p>16 BY MR. STUEVE:</p> <p>17 Q. I'm sorry?</p> <p>18 MR. BARNES: Are you a member of</p> <p>19 any group purchasing?</p> <p>20 MR. STUEVE: If you would, let me</p> <p>21 ask the question.</p> <p>22 MR. BARNES: I apologize.</p>
<p style="text-align: right;">642</p> <p>1 that you purchase from?</p> <p>2 A. The refinery is someplace in</p> <p>3 Illinois, I think.</p> <p>4 Q. Do you remember the name of the</p> <p>5 co-op?</p> <p>6 A. The local co-op that we purchase</p> <p>7 from would be the Jackson Jennings co-op.</p> <p>8 Q. Okay. Do you remember the names</p> <p>9 of any other co-ops that you purchase goods and</p> <p>10 services from?</p> <p>11 A. There is one I think called Agro</p> <p>12 Key in northern Indiana. Then there's one in --</p> <p>13 I think they've changed their name. I would</p> <p>14 assume that there are some of these same types</p> <p>15 of co-ops. Any farming community you go into,</p> <p>16 there's these little co-ops that are selling</p> <p>17 goods and services and we've always bought from</p> <p>18 them in the past. I don't know if we have to be</p> <p>19 a member or not. I know you can drive up with</p> <p>20 your car to their gas station and get gas and</p> <p>21 you don't have to sign any agreement.</p> <p>22 Q. Do you know whether you're</p>	<p style="text-align: right;">644</p> <p>1 THE WITNESS: I answered that.</p> <p>2 MR. BARNES: Ask it again, please</p> <p>3 ask it again.</p> <p>4 THE WITNESS: I answered too</p> <p>5 quick, I think.</p> <p>6 MR. BARNES: Let him state the</p> <p>7 question and then answer.</p> <p>8 BY MR. STUEVE:</p> <p>9 Q. If you look at topic number 3, it</p> <p>10 says, your membership in any group purchasing</p> <p>11 organization.</p> <p>12 Do you -- are you a member in any</p> <p>13 group purchasing organization?</p> <p>14 A. I don't believe we are. No.</p> <p>15 Q. Did you ask Kent Ford in</p> <p>16 preparation for your deposition today whether or</p> <p>17 not Rose Acre is a member of any group</p> <p>18 purchasing organization?</p> <p>19 A. I think we would have, correct. I</p> <p>20 did not personally ask him, but I was told to</p> <p>21 say no.</p> <p>22 Q. Okay. I believe you've been</p>

HIGHLY CONFIDENTIAL

Rust, Marcus - Vol. II

March 6, 2014

70 (Pages 645 to 648)

<p style="text-align: right;">645</p> <p>1 designated for topic number 6?</p> <p>2 MR. MONICA: Don't think so.</p> <p>3 MR. BARNES: I don't think so,</p> <p>4 Pat.</p> <p>5 MR. STUEVE: That's Mr. Hinton;</p> <p>6 right?</p> <p>7 MR. BARNES: I believe so. I</p> <p>8 don't have that list in front of me, but it</p> <p>9 certainly wasn't Mr. Rust.</p> <p>10 BY MR. STUEVE:</p> <p>11 Q. If you could, topic 16. The topic</p> <p>12 is, consolidation in the egg industry from 1990</p> <p>13 to the present?</p> <p>14 A. Correct.</p> <p>15 Q. Do you see that topic?</p> <p>16 A. Correct.</p> <p>17 Q. Big broad terms, is it fair to say</p> <p>18 that there has been significant consolidation in</p> <p>19 the egg industry since 1999?</p> <p>20 A. Correct.</p> <p>21 Q. Okay. And if you would, I'm going</p> <p>22 to show you, refer you back to Exhibit 518.</p>	<p style="text-align: right;">647</p> <p>1 period is not a part of your lawsuit and your</p> <p>2 30(b)(6) specifies for a period of time from</p> <p>3 1999. I'll let you ask the witness questions</p> <p>4 subject to my objection. They're beyond the</p> <p>5 scope of your own 30(b)(6) and your own lawsuit.</p> <p>6 BY MR. STUEVE:</p> <p>7 Q. It says, 1978, built Cort Acres in</p> <p>8 Cortland, Indiana; correct, sir?</p> <p>9 A. That's what it says.</p> <p>10 Q. And the approximate number of</p> <p>11 layers at Cort Acres is 3 million; is that</p> <p>12 correct?</p> <p>13 A. When? What date?</p> <p>14 Q. Today.</p> <p>15 A. Today. Correct.</p> <p>16 Q. And then in 1984, Rose Acre built</p> <p>17 Newton County Egg Farm in Brook, Indiana; is</p> <p>18 that right?</p> <p>19 A. Correct.</p> <p>20 Q. And Newton County today has</p> <p>21 approximately 1.5 million layers; right?</p> <p>22 A. Approximately.</p>
<p style="text-align: right;">646</p> <p>1 If you turn to the second page of</p> <p>2 that brochure, it has the history and growth of</p> <p>3 Rose Acres. Do you remember we looked at that?</p> <p>4 A. Correct.</p> <p>5 Q. And starting in 1973, you have</p> <p>6 built Jen Acres, North Vernon; is that right?</p> <p>7 A. Correct.</p> <p>8 Q. Just to be clear, you've been</p> <p>9 referring to that, it's spelled J-E-N,</p> <p>10 A-C-R-E-S; is that right?</p> <p>11 A. Correct.</p> <p>12 Q. It's in North Vernon, Indiana;</p> <p>13 right?</p> <p>14 A. Correct.</p> <p>15 Q. And the approximate number of</p> <p>16 layers at that facility is 1.5 million; is that</p> <p>17 right?</p> <p>18 A. Approximately.</p> <p>19 Q. Then in '78, you built Cort Acres</p> <p>20 in Cortland, Indiana; is that right?</p> <p>21 MR. BARNES: I'm going to object</p> <p>22 to these questions going back to the '70s. That</p>	<p style="text-align: right;">648</p> <p>1 Q. And then in 1985, Rose Acre built</p> <p>2 White County Egg Farm in Monon, Indiana; right?</p> <p>3 Is that correct?</p> <p>4 A. Correct.</p> <p>5 Q. And it has approximately</p> <p>6 1.5 million layers; correct?</p> <p>7 A. Close. Correct.</p> <p>8 Q. And then in 1986, Rose Acre built</p> <p>9 Pulaski County Egg Farm in Francisville,</p> <p>10 Indiana; correct?</p> <p>11 A. Correct.</p> <p>12 Q. And that has approximately</p> <p>13 2 million layers; right?</p> <p>14 A. Correct.</p> <p>15 Q. And then in 1987, Rose Acre built</p> <p>16 Winterset Egg Farm in Winterset, Iowa; correct?</p> <p>17 A. Correct.</p> <p>18 Q. And Winterset has approximately</p> <p>19 1 million layers?</p> <p>20 A. Approximately. Yeah.</p> <p>21 Q. And then in 1989, Rose Acre built</p> <p>22 Guthrie Center Egg Farm in Guthrie Center, Iowa;</p>

HIGHLY CONFIDENTIAL

Rust, Marcus - Vol. II

March 6, 2014

71 (Pages 649 to 652)

<p style="text-align: right;">649</p> <p>1 correct?</p> <p>2 A. Correct.</p> <p>3 Q. And Guthrie Center has</p> <p>4 approximately 1.5 million layers; right?</p> <p>5 A. Approximately.</p> <p>6 Q. And then in 1991, Rose Acre built</p> <p>7 Stuart Egg Farm in Stuart, Iowa; correct?</p> <p>8 A. Correct.</p> <p>9 Q. And Stuart has approximately</p> <p>10 1.5 million layers; correct?</p> <p>11 A. Approximately. Correct.</p> <p>12 Q. Then in 1993, Rose Acre purchased</p> <p>13 Marshall Egg Products in Marshall, Missouri;</p> <p>14 correct?</p> <p>15 A. Correct.</p> <p>16 Q. And does that have any egg laying</p> <p>17 facilities there?</p> <p>18 A. It owns Johnson County.</p> <p>19 Q. And Johnson County is in Knob</p> <p>20 Noster; right?</p> <p>21 A. Correct.</p> <p>22 Q. And Johnson County has</p>	<p style="text-align: right;">651</p> <p>1 Egg Products in Marshall, Missouri, you</p> <p>2 purchased Johnson County Egg Farm in Knob</p> <p>3 Noster; correct?</p> <p>4 A. Correct.</p> <p>5 Q. And then in 1995, Rose Acre</p> <p>6 purchased Lincoln County Egg Farm, Hawk Point,</p> <p>7 Missouri; right? Is that correct?</p> <p>8 A. That date may be wrong.</p> <p>9 Q. When do you think it may have</p> <p>10 been?</p> <p>11 A. I would have to look at records to</p> <p>12 see.</p> <p>13 Q. Lincoln County has approximately</p> <p>14 1 million layers?</p> <p>15 A. Yeah, or a little less.</p> <p>16 Q. And then in 1998, Rose Acre</p> <p>17 purchased NEPCO Egg Products in Social Circle,</p> <p>18 Georgia; is that right?</p> <p>19 A. Yeah, about then.</p> <p>20 Q. And does it own any egg laying</p> <p>21 facilities?</p> <p>22 A. No.</p>
<p style="text-align: right;">650</p> <p>1 approximately 2 million layers; right?</p> <p>2 A. No.</p> <p>3 Q. How many does it have there?</p> <p>4 A. Best memory, a million 7.</p> <p>5 Q. Okay. 1.7 million?</p> <p>6 A. Capacity. I don't know what the</p> <p>7 actual bird number would be. The records will</p> <p>8 show that.</p> <p>9 Q. And then in 1994, you purchased</p> <p>10 the Johnson County Egg Farm in Knob Noster;</p> <p>11 right?</p> <p>12 A. That's one you just asked me.</p> <p>13 MR. BARNES: Just asked and</p> <p>14 answered.</p> <p>15 BY MR. STUEVE:</p> <p>16 Q. Sir, I didn't ask -- I had asked</p> <p>17 you -- I asked you about Marshall Egg Products;</p> <p>18 right?</p> <p>19 A. I told you it owned Johnson County</p> <p>20 Egg Farm.</p> <p>21 Q. And so I just want the record to</p> <p>22 reflect the year after you purchased Marshall</p>	<p style="text-align: right;">652</p> <p>1 Q. What is its primary purpose?</p> <p>2 MR. BARNES: Objection. Asked and</p> <p>3 answered. You asked him this earlier today or</p> <p>4 yesterday. I can't remember when.</p> <p>5 BY MR. STUEVE:</p> <p>6 Q. You can answer.</p> <p>7 MR. BARNES: Go ahead. Tell him</p> <p>8 again.</p> <p>9 THE WITNESS: It's just an old</p> <p>10 closed down drying facility.</p> <p>11 BY MR. STUEVE:</p> <p>12 Q. Very good. I remember that now.</p> <p>13 In 1999 Rose Acre built Oconee Egg</p> <p>14 Farm in Madison, Georgia; correct?</p> <p>15 A. Not quite correct.</p> <p>16 Q. What's inaccurate about the</p> <p>17 document?</p> <p>18 A. We had purchased the farm and then</p> <p>19 we come back and added birds to it another date.</p> <p>20 Q. Okay. So you didn't actually</p> <p>21 build the Oconee Egg Farm?</p> <p>22 A. Correct. We did not start it, we</p>

HIGHLY CONFIDENTIAL

Rust, Marcus - Vol. II

March 6, 2014

72 (Pages 653 to 656)

<p style="text-align: right;">653</p> <p>1 just added production to it.</p> <p>2 Q. Okay. And would you have actually</p> <p>3 acquired it in 1999?</p> <p>4 A. We purchased that from a guy by</p> <p>5 the name of Johnny Jacobs in '99, '98. I'm not</p> <p>6 sure of the exact date.</p> <p>7 Q. And the Oconee Egg Farm has</p> <p>8 approximately 1 million layers; right?</p> <p>9 A. It's about 1 and a half million</p> <p>10 today.</p> <p>11 Q. Okay. Then in 2002, Rose Acre</p> <p>12 purchased Donovan Egg Farm in Donovan, Illinois;</p> <p>13 right?</p> <p>14 A. Correct.</p> <p>15 Q. Approximately how many layers are</p> <p>16 there in Donovan?</p> <p>17 A. Then or today?</p> <p>18 Q. Today.</p> <p>19 A. 150, 180, something like that.</p> <p>20 Q. Okay. And then in 2004, Rose Acre</p> <p>21 purchased Germantown Egg Farm in Germantown,</p> <p>22 Indiana; right?</p>	<p style="text-align: right;">655</p> <p>1 Q. Okay. And then what's not listed</p> <p>2 on here is Crystal Farms; right?</p> <p>3 A. Correct.</p> <p>4 Q. And when -- was that built or</p> <p>5 acquired?</p> <p>6 A. That was acquired.</p> <p>7 Q. And approximately when was that</p> <p>8 acquired?</p> <p>9 A. I would have to look at a date.</p> <p>10 5, 6 years ago. 5 years ago.</p> <p>11 Q. So that would have been roughly</p> <p>12 2008 timeframe?</p> <p>13 A. 2008, 2010, somewhere in that time</p> <p>14 period.</p> <p>15 Q. I believe you testified earlier</p> <p>16 you estimated the number of layers there is</p> <p>17 about 2 and a half million?</p> <p>18 A. No.</p> <p>19 Q. Okay. What is it?</p> <p>20 A. It's about -- when we purchased</p> <p>21 it, I think it was 1.3. And we're in the</p> <p>22 process of adding another 250,000, plus or</p>
<p style="text-align: right;">654</p> <p>1 A. Correct.</p> <p>2 Q. And Germantown has approximately</p> <p>3 1 million layers; is that right?</p> <p>4 A. Pretty close. 8 or 900,000. I</p> <p>5 would have to look at records.</p> <p>6 Q. Okay. And then in 2004, Rose Acre</p> <p>7 also purchased County Line Egg Farm in</p> <p>8 Frankfort, Indiana; right?</p> <p>9 A. Yeah.</p> <p>10 Q. And County Line has approximately</p> <p>11 1 million layers; correct?</p> <p>12 A. Correct. A tornado hit it.</p> <p>13 Q. And then in 2005, Rose Acre broke</p> <p>14 ground on Hyde County Egg Farm in Pantego, North</p> <p>15 Carolina; is that right?</p> <p>16 A. Correct.</p> <p>17 Q. And Hyde County has approximately</p> <p>18 3 million layers?</p> <p>19 A. Capacity may be 3.5.</p> <p>20 Q. Approximately how many layers is</p> <p>21 it? 3 or is it a little over?</p> <p>22 A. It would be now a little over 3.</p>	<p style="text-align: right;">656</p> <p>1 minus.</p> <p>2 Q. So currently, what is the layers?</p> <p>3 A. Currently?</p> <p>4 Q. Yeah.</p> <p>5 A. About 1.2, 1.3.</p> <p>6 Q. Are there any other egg production</p> <p>7 facilities that we've not identified?</p> <p>8 A. No.</p> <p>9 Q. Now, if you would, if you could</p> <p>10 turn to 523 again. That was the Egg Industry</p> <p>11 publication we looked at earlier?</p> <p>12 A. Yeah.</p> <p>13 Q. This document on the front page,</p> <p>14 it says -- it ranks the top 11 egg producers.</p> <p>15 And it says, nearly 151 million laying hens</p> <p>16 housed by the top 11 egg companies in the US</p> <p>17 represent just over half of the US total table</p> <p>18 egg layer flocks as reported by the USDA. Do</p> <p>19 you see that?</p> <p>20 A. Correct.</p> <p>21 Q. And is that consistent with your</p> <p>22 understanding?</p>

HIGHLY CONFIDENTIAL

Rust, Marcus - Vol. II

March 6, 2014

73 (Pages 657 to 660)

<p style="text-align: right;">657</p> <p>1 A. That's what it says here.</p> <p>2 Q. That would certainly be an</p> <p>3 indication of a substantial consolidation that</p> <p>4 has occurred in the egg industry; right?</p> <p>5 A. Correct.</p> <p>6 Q. A lot less egg producers producing</p> <p>7 a lot more eggs; fair enough?</p> <p>8 A. Correct.</p> <p>9 Q. Now, topic 17 is for each year</p> <p>10 your total annual layers. Do you see that?</p> <p>11 A. Which one?</p> <p>12 Q. Topic 17?</p> <p>13 A. Oh. Okay.</p> <p>14 Q. And I believe you testified that</p> <p>15 to the best of your recollection at least</p> <p>16 currently the number of layers is 22 million</p> <p>17 plus?</p> <p>18 A. That's the number that I last saw</p> <p>19 on a weekly production, that list by house and</p> <p>20 there's a total compilation at the bottom says</p> <p>21 how many live chickens there is.</p> <p>22 Q. So there is a document that would</p>	<p style="text-align: right;">659</p> <p>1 layers. You are not physically counting</p> <p>2 22 million birds on a weekly basis; right?</p> <p>3 A. I've had accountants who come out</p> <p>4 and wanted to do that.</p> <p>5 Q. They're like lawyers, they bill by</p> <p>6 the hour; right?</p> <p>7 A. I left one of them in the hen</p> <p>8 house for about a day.</p> <p>9 Q. In preparing your weekly</p> <p>10 summaries, you are obviously not hand counting</p> <p>11 22 million birds on a weekly basis; right?</p> <p>12 A. They computer and paper count</p> <p>13 daily. We start with a paper count from each</p> <p>14 individual house where they pick the daily</p> <p>15 mortality. And then if they happen to move in</p> <p>16 birds, they create a paper number that says this</p> <p>17 is how many birds got moved into the house if</p> <p>18 they move birds out, they make a report up on</p> <p>19 how many birds got moved out.</p> <p>20 Q. So basically they're taking a</p> <p>21 number and based on mortality count, reduce that</p> <p>22 number based on hens moved into the house, they</p>
<p style="text-align: right;">658</p> <p>1 have the total number of live chickens for all</p> <p>2 of the facilities?</p> <p>3 A. Every week.</p> <p>4 Q. Every week?</p> <p>5 A. Correct.</p> <p>6 MR. BARNES: I believe those have</p> <p>7 been produced. They, of course, are the best</p> <p>8 evidence of the yearly flock totals for the</p> <p>9 company.</p> <p>10 BY MR. STUEVE:</p> <p>11 Q. We've seen some of those. We</p> <p>12 weren't quite sure what the numbers meant, and</p> <p>13 so the total number of layers for all the</p> <p>14 facilities would be included in those documents</p> <p>15 on a weekly basis?</p> <p>16 A. Correct, it's weekly. That's our</p> <p>17 production record.</p> <p>18 Q. How is that count actually taken</p> <p>19 -- how does it take place?</p> <p>20 A. How do you mean?</p> <p>21 Q. Obviously, there has to be some</p> <p>22 estimate, right, with respect to the number of</p>	<p style="text-align: right;">660</p> <p>1 increase that number. Fair enough?</p> <p>2 A. Fair enough.</p> <p>3 Q. All right. Topic 19 is the</p> <p>4 entities that produce the eggs and egg products</p> <p>5 you market and sell, and your ownership of any</p> <p>6 of these entities. We walked through that in</p> <p>7 detail yesterday; correct?</p> <p>8 A. Correct.</p> <p>9 Q. Are there any entities that</p> <p>10 produce eggs or egg products that we've not</p> <p>11 identified?</p> <p>12 A. Trying to think here. No.</p> <p>13 Q. Okay. And then topic 20, you've</p> <p>14 been designated for A through E and we talked</p> <p>15 about your decision to join UEP. We talked</p> <p>16 about the membership agreement that you signed;</p> <p>17 right? Do you remember that?</p> <p>18 A. Correct.</p> <p>19 Q. Then we walked through the years</p> <p>20 Rose Acre has been a UEP member. Then we also</p> <p>21 walked through the various committees that</p> <p>22 members of Rose Acre are involved in; right?</p>

HIGHLY CONFIDENTIAL

Rust, Marcus - Vol. II

March 6, 2014

74 (Pages 661 to 664)

<p style="text-align: right;">661</p> <p>1 A. I think we did.</p> <p>2 Q. Okay. Is there any involvement in</p> <p>3 UEP from Rose Acre's standpoint that we haven't</p> <p>4 talked about?</p> <p>5 A. I don't recollect any.</p> <p>6 Q. And then you're also designated</p> <p>7 for topic 22, some of the items in there, which</p> <p>8 is your membership in USEM. We showed the</p> <p>9 documentation that you -- Rose Acre joined in</p> <p>10 2006?</p> <p>11 A. Correct.</p> <p>12 Q. Do you recall why you joined in</p> <p>13 2006?</p> <p>14 A. Correct.</p> <p>15 Q. Why?</p> <p>16 A. We had just built our production</p> <p>17 facility in North Carolina, and we was going to</p> <p>18 have surplus eggs in an area that we would be</p> <p>19 able to ship to Norfolk, which is one of the</p> <p>20 largest shipping points out of the United</p> <p>21 States. And we was going to be in a great</p> <p>22 position to market surplus eggs if they took any</p>	<p style="text-align: right;">663</p> <p>1 that right?</p> <p>2 A. Correct.</p> <p>3 Q. Let's turn to topic 26. That's</p> <p>4 the Capper-Volstead Act and the Kansas</p> <p>5 Cooperative Marketing Act topic. Do you see</p> <p>6 that?</p> <p>7 A. Correct.</p> <p>8 Q. We -- I showed you some documents</p> <p>9 earlier that had Brann & Isaacson legal advice</p> <p>10 from November 2004 memorandum and then it</p> <p>11 attached the 1992 memorandum. Do you recall</p> <p>12 that?</p> <p>13 A. Correct.</p> <p>14 Q. We walked through those two</p> <p>15 documents. Do you have any knowledge concerning</p> <p>16 the Capper-Volstead Act other than what was</p> <p>17 contained in those two documents?</p> <p>18 A. Not much.</p> <p>19 Q. Do you recall ever having a</p> <p>20 discussion with anyone at Brann & Isaacson</p> <p>21 concerning the Capper-Volstead Act?</p> <p>22 A. No.</p>
<p style="text-align: right;">662</p> <p>1 export orders.</p> <p>2 Q. Did you have any facilities</p> <p>3 anywhere else on the East Coast?</p> <p>4 A. No.</p> <p>5 Q. Well, you had your -- when did</p> <p>6 you -- with respect to Oconee Egg Farms, that</p> <p>7 was in Georgia; right?</p> <p>8 A. Correct.</p> <p>9 Q. You consider Georgia East Coast;</p> <p>10 don't you?</p> <p>11 A. No.</p> <p>12 MR. BARNES: I don't think</p> <p>13 Georgians would either.</p> <p>14 BY MR. STUEVE:</p> <p>15 Q. You also had Crystal Farms in</p> <p>16 Georgia as well; correct?</p> <p>17 A. Not when we joined USEM.</p> <p>18 Q. Okay. That was after you joined</p> <p>19 USEM?</p> <p>20 A. Correct.</p> <p>21 Q. So you had the Georgia facility,</p> <p>22 the Oconee facility prior to joining USEM; is</p>	<p style="text-align: right;">664</p> <p>1 Q. Okay. Did you -- prior to the</p> <p>2 filing of this lawsuit, you would have had</p> <p>3 communications with Randon Wilson about the</p> <p>4 Capper-Volstead Act; is that correct?</p> <p>5 A. Concerning the certified eggs</p> <p>6 products attempt.</p> <p>7 Q. Do you remember anything specific</p> <p>8 about the advice you got with respect to that</p> <p>9 cooperative from Randon Wilson?</p> <p>10 A. Not much different than the other.</p> <p>11 Q. Okay. Did you receive any other</p> <p>12 level advice prior to the filing of the</p> <p>13 antitrust lawsuits in '08 from any lawyer</p> <p>14 concerning the Capper-Volstead Act?</p> <p>15 MR. BARNES: I'm going to object</p> <p>16 to that to the extent it calls for privileged</p> <p>17 communications.</p> <p>18 MR. STUEVE: I'm not asking for</p> <p>19 the content, just subject matter.</p> <p>20 MR. BARNES: I'm sorry, you're</p> <p>21 correct. Go ahead.</p> <p>22 BY MR. STUEVE:</p>

HIGHLY CONFIDENTIAL

Rust, Marcus - Vol. II

March 6, 2014

75 (Pages 665 to 668)

<p style="text-align: right;">665</p> <p>1 Q. Okay. Just asking with respect to</p> <p>2 the subject matter of the Capper-Volstead Act,</p> <p>3 did you receive any other advice from a lawyer</p> <p>4 prior to 2008?</p> <p>5 A. I don't recollect any.</p> <p>6 Q. Topic number 27 is -- let me ask</p> <p>7 you this. Do you have any knowledge of the</p> <p>8 Kansas Cooperative Marketing Act?</p> <p>9 A. Very little.</p> <p>10 Q. Any that you can share with us</p> <p>11 today?</p> <p>12 A. No more than what I see here on</p> <p>13 these papers.</p> <p>14 Q. Then with respect to 27, other</p> <p>15 state or federal statutes providing any</p> <p>16 potential immunity from the Kansas Restraint of</p> <p>17 Trade Act. Are you aware of any?</p> <p>18 A. No.</p> <p>19 Q. And then topic 33. He's?</p> <p>20 MR. MONICA: He's designated.</p> <p>21 BY MR. STUEVE:</p> <p>22 Q. You've been designated -- any</p>	<p style="text-align: right;">667</p> <p>1 stack.</p> <p>2 MR. STUEVE: Sure.</p> <p>3 MR. BARNES: That will be</p> <p>4 appreciated. Hopefully we can get through in</p> <p>5 15 minutes or so.</p> <p>6 MR. STUEVE: Okay.</p> <p>7 THE VIDEOGRAPHER: This is the end</p> <p>8 of videotape number 4. Off the record at 5:27</p> <p>9 p.m.</p> <p>10 (A brief recess was taken.)</p> <p>11 THE VIDEOGRAPHER: This is the</p> <p>12 beginning of tape number 5. Back on the record</p> <p>13 at 5:47 p.m.</p> <p>14 EXAMINATION BY COUNSEL FOR ROSE ACRE FARMS</p> <p>15 BY MR. BARNES:</p> <p>16 Q. Mr. Rust, you know who I am; don't</p> <p>17 you?</p> <p>18 A. Correct. Most expensive guy I've</p> <p>19 ever hired.</p> <p>20 Q. We don't know what Mr. Stueve's</p> <p>21 rates are, though. I just have a few clean up</p> <p>22 questions for you to clean up some areas of the</p>
<p style="text-align: right;">666</p> <p>1 communications between you and UEP, USEM or any</p> <p>2 other defendant in this case or any other</p> <p>3 attorneys regarding the legality of your</p> <p>4 activities under the federal or state antitrust</p> <p>5 laws. Do you see that topic?</p> <p>6 A. Correct.</p> <p>7 Q. Again, we showed you the</p> <p>8 Capper-Volstead related advice. We walked</p> <p>9 through that. Do you recall any other documents</p> <p>10 that you had -- would have received from either</p> <p>11 UEP or USEM or any other defendant in this case</p> <p>12 concerning the Capper-Volstead Act?</p> <p>13 A. Don't recall any.</p> <p>14 Q. Okay. Do you remember any</p> <p>15 communication between you and UEP, USEM,</p> <p>16 concerning the Capper-Volstead Act?</p> <p>17 A. Not that hasn't been shown or</p> <p>18 disclosed here. I don't recall any.</p> <p>19 MR. STUEVE: I don't have any</p> <p>20 further questions of the witness.</p> <p>21 MR. BARNES: Mr. Stueve, if you</p> <p>22 would give us 10 minutes to whittle down my</p>	<p style="text-align: right;">668</p> <p>1 record. I'll try to be very quick. It's been a</p> <p>2 long day, you're tired, counsel are tired. Our</p> <p>3 very excellent court reporter and videographer</p> <p>4 are tired, so we'll try to make this as quick</p> <p>5 and painless as possible, okay?</p> <p>6 So please, it's late in the day.</p> <p>7 Try to concentrate on my questions, if you will.</p> <p>8 Were you ever a member of the UEP</p> <p>9 Executive Committee?</p> <p>10 A. No.</p> <p>11 Q. There has been previous testimony,</p> <p>12 Mr. Rust, about who can buy noncertified eggs,</p> <p>13 whether UEP certified members can buy</p> <p>14 noncertified eggs from other sources. Can you</p> <p>15 please tell us whether your company, Rose Acre</p> <p>16 Farms, which is a UEP certified member, has been</p> <p>17 for a decade, whether Rose Acre Farms currently</p> <p>18 buys noncertified eggs?</p> <p>19 MR. STUEVE: Objection to form.</p> <p>20 Compound.</p> <p>21 THE WITNESS: We buy some.</p> <p>22 BY MR. BARNES:</p>

HIGHLY CONFIDENTIAL

Rust, Marcus - Vol. II

March 6, 2014

76 (Pages 669 to 672)

<p style="text-align: right;">669</p> <p>1 Q. How long have you -- you meaning</p> <p>2 Rose Acre Farms -- purchased noncertified eggs?</p> <p>3 A. Off and on during the whole time</p> <p>4 of the whole program.</p> <p>5 Q. Do you know whether other UEP</p> <p>6 certified egg producing members also purchase</p> <p>7 noncertified eggs?</p> <p>8 MR. STUEVE: Objection calls for</p> <p>9 speculation on the part of the witness.</p> <p>10 THE WITNESS: Some have said they</p> <p>11 have.</p> <p>12 BY MR. BARNES:</p> <p>13 Q. Have you ever been sanctioned by</p> <p>14 UEP for purchasing noncertified eggs?</p> <p>15 A. No.</p> <p>16 Q. Mr. Rust, I am going to redirect</p> <p>17 your attention back to what Mr. Stueve marked as</p> <p>18 Exhibit 536. Can you find that exhibit, please?</p> <p>19 MR. BARNES: John, can you perhaps</p> <p>20 give him a hand? 536. For the record,</p> <p>21 Exhibit 536 is a two page document bearing</p> <p>22 identification number RA 0067468 to 0067469.</p>	<p style="text-align: right;">671</p> <p>1 BY MR. BARNES:</p> <p>2 Q. Okay. Mr. Rust, Mr. Stueve asked</p> <p>3 you about certain parts of this exhibit. I'm</p> <p>4 going to ask you about other parts; okay?</p> <p>5 A. Okay.</p> <p>6 Q. Now, if you look again at the</p> <p>7 second page, he did direct your attention in the</p> <p>8 middle of the page to a sentence that says, "I</p> <p>9 think some people think it will make them rich</p> <p>10 or something." Do you see that language, it's</p> <p>11 six lines down. It begins, I think?</p> <p>12 A. Okay.</p> <p>13 Q. I think some people. It's in the</p> <p>14 text. I think some people think it will make</p> <p>15 them rich or something. Do you see that</p> <p>16 language?</p> <p>17 A. Correct.</p> <p>18 Q. Would you look in the margin</p> <p>19 immediately adjacent to that language and</p> <p>20 there's a dash, do you see the handwritten dash?</p> <p>21 A. Correct.</p> <p>22 Q. And then there's handwritten</p>
<p style="text-align: right;">670</p> <p>1 The first page appears to be a</p> <p>2 memo or letter from KY Hendrix to Lois Rust,</p> <p>3 Marcus Rust and others dated March 14, 2002.</p> <p>4 MR. STUEVE: Do you remember when</p> <p>5 we covered that?</p> <p>6 MR. BARNES: Pat?</p> <p>7 MR. MONICA: What was the number,</p> <p>8 Don?</p> <p>9 MR. BARNES: 536.</p> <p>10 THE WITNESS: Here we go, bottom</p> <p>11 one.</p> <p>12 MR. BARNES: Mr. Stueve, he's got</p> <p>13 it.</p> <p>14 BY MR. BARNES:</p> <p>15 Q. I'm going to direct your attention</p> <p>16 to the second page, some of the handwritten</p> <p>17 notes on the second page. Take a minute to --</p> <p>18 while Mr. Stueve -- give him an opportunity to</p> <p>19 catch up. Take a look at the handwritten notes,</p> <p>20 please. And when counsel is ready, I'll have a</p> <p>21 couple questions for you.</p> <p>22 MR. STUEVE: Okay.</p>	<p style="text-align: right;">672</p> <p>1 two words written next to that. Do you see</p> <p>2 that?</p> <p>3 A. Correct.</p> <p>4 Q. What does it say?</p> <p>5 A. It won't.</p> <p>6 Q. Take a look at the handwritten</p> <p>7 notations on the right side of this document. I</p> <p>8 believe you already testified that's the</p> <p>9 handwriting of your mother, Lois Rust; is that</p> <p>10 correct?</p> <p>11 A. Correct.</p> <p>12 Q. And you previously testified in</p> <p>13 response to some of Mr. Stueve's questions about</p> <p>14 the attacks that certain radical animal rights</p> <p>15 groups made on Rose Acre Farms. Do you recall</p> <p>16 that?</p> <p>17 MR. STUEVE: Objection. Leading.</p> <p>18 THE WITNESS: Correct.</p> <p>19 BY MR. BARNES:</p> <p>20 Q. Do you recall that testimony?</p> <p>21 A. Correct.</p> <p>22 Q. I believe you testified that a</p>

HIGHLY CONFIDENTIAL

Rust, Marcus - Vol. II

March 6, 2014

77 (Pages 673 to 676)

<p style="text-align: right;">673</p> <p>1 truck was burned; is that correct?</p> <p>2 A. Correct.</p> <p>3 Q. And there was other acts of</p> <p>4 violence that you testified to?</p> <p>5 A. Electrical transformers, water</p> <p>6 plant.</p> <p>7 Q. Take a look at your mother's</p> <p>8 handwriting in the middle of the page, it</p> <p>9 begins, she said, this is guerilla, and she</p> <p>10 underlined guerilla, warfare.</p> <p>11 MR. STUEVE: I'm going to object.</p> <p>12 MR. BARNES: Why?</p> <p>13 MR. STUEVE: Objection. Leading.</p> <p>14 MR. BARNES: I haven't asked a</p> <p>15 question yet.</p> <p>16 MR. STUEVE: You're reading the</p> <p>17 handwritten note.</p> <p>18 MR. BARNES: Yeah, you did that</p> <p>19 all afternoon. You read documents all</p> <p>20 afternoon. I'm just doing what you did, Pat.</p> <p>21 MR. STUEVE: Objection. Leading.</p> <p>22 MR. BARNES: Make your objection</p>	<p style="text-align: right;">675</p> <p>1 and the animal welfare program?</p> <p>2 A. Correct. It did.</p> <p>3 Q. Now, directing your attention</p> <p>4 further on down your mother's handwritten note,</p> <p>5 and I'll see if -- I'll start the sentence and</p> <p>6 see if you can pick it up. It says, UEP did the</p> <p>7 right thing. Do you see that language?</p> <p>8 A. Right, to have the cage test done</p> <p>9 as it was done scientifically.</p> <p>10 MR. STUEVE: Objection. Testimony</p> <p>11 is not responsive to the question.</p> <p>12 MR. BARNES: Well, I asked him to</p> <p>13 read it.</p> <p>14 BY MR. BARNES:</p> <p>15 Q. Her handwritten note as you've</p> <p>16 read states, UEP did the right thing to have the</p> <p>17 cage test as it was done scientifically. Do you</p> <p>18 see that?</p> <p>19 A. Correct.</p> <p>20 Q. Did you discuss that issue with</p> <p>21 your mother?</p> <p>22 A. Correct.</p>
<p style="text-align: right;">674</p> <p>1 but let me finish my question before you object.</p> <p>2 BY MR. BARNES:</p> <p>3 Q. Your mom's handwritten note on the</p> <p>4 right-hand side of this document?</p> <p>5 A. Correct.</p> <p>6 Q. I'm going to read it, you follow</p> <p>7 along, you tell me if I've misread it, okay?</p> <p>8 A. Okay.</p> <p>9 Q. Better yet, why don't you read it</p> <p>10 beginning with this?</p> <p>11 A. This is guerilla warfare we're in,</p> <p>12 we've had one truck burned up already, and best</p> <p>13 way is to keep a low profile because they,</p> <p>14 animal welfare, want attention.</p> <p>15 Q. Thank you, Mr. Rust. Did you</p> <p>16 discuss the guerilla warfare that the animal --</p> <p>17 radical animal rights groups were conducting</p> <p>18 against Rose Acre with your mother?</p> <p>19 A. Correct.</p> <p>20 Q. Did that conduct -- did that</p> <p>21 violence by these animal rights activists have</p> <p>22 anything to do with your decision to join UEP</p>	<p style="text-align: right;">676</p> <p>1 Q. Did you agree with your mother</p> <p>2 that UEP did the right thing to have the cage</p> <p>3 test, as it was done scientifically?</p> <p>4 A. Correct.</p> <p>5 Q. Okay. Would you take a look,</p> <p>6 Mr. Rust, at Exhibit 535, which was marked by</p> <p>7 Mr. Stueve. It should -- hopefully, it's the</p> <p>8 one right before or after 536?</p> <p>9 A. Correct.</p> <p>10 Q. Okay. We'll give counsel on the</p> <p>11 other side of the table a chance to locate that</p> <p>12 exhibit.</p> <p>13 A. It's marked highly confidential.</p> <p>14 Q. Pardon me?</p> <p>15 A. It's marked highly confidential.</p> <p>16 Q. Well, we're going to resolve that</p> <p>17 with a stipulation at the end of your</p> <p>18 deposition. We've already discussed that.</p> <p>19 MR. STUEVE: I'm sorry. Where are</p> <p>20 we at?</p> <p>21 MR. BARNES: We're at 535.</p> <p>22 MR. STUEVE: Which document?</p>

HIGHLY CONFIDENTIAL

Rust, Marcus - Vol. II

March 6, 2014

78 (Pages 677 to 680)

<p style="text-align: right;">677</p> <p>1 MR. BARNES: This is the special 2 called UEP marketing conference call, 3 September 24, 2001. 4 MR. STUEVE: 535. 5 MR. BARNES: 535, correct. 6 MR. STUEVE: Got it. 7 BY MR. BARNES: 8 Q. Mr. Rust, I only have one 9 question, maybe two, about this document. The 10 document is dated September 24, 2001. That was 11 before Rose Acre became a member of UEP; is that 12 correct? 13 A. Yes. It is. 14 Q. There's a list in the front of 15 this document which says, Marketing Committee 16 Chairman Dolph Baker called the meeting to 17 order, the following were present. There are 18 two or three lengthy lists of people. Are any 19 of those people Rose Acre people? 20 A. No. 21 Q. Did you participate in this 22 conference call?</p>	<p style="text-align: right;">679</p> <p>1 home, this is Exhibit 562, it's an October 5, 2 2006, e-mail from Gene Gregory addressed to all. 3 It talks about an Animal Welfare Committee 4 meeting on Tuesday, October 10th. 5 You've already testified about 6 this exhibit, Mr. Rust, I'm not going to go over 7 that. I want to direct your attention to the 8 Brann Isaacson memorandum, the second page of 9 the Brann Isaacson memorandum, and they were the 10 lawyers for UEP; correct? 11 A. Correct. 12 Q. The second page of this Brann 13 Isaacson memorandum, and it was written, by the 14 way, by Kevin Haley and David Sweetnam Berland. 15 Do you know who Kevin Haley is? 16 A. Correct. 17 MR. STUEVE: I'm going to object 18 to the form of the question. 19 THE WITNESS: Yes. I know who 20 Kevin is. 21 BY MR. BARNES: 22 Q. Who's Kevin Haley?</p>
<p style="text-align: right;">678</p> <p>1 A. No. 2 Q. Next exhibit. Would you look, 3 please, at 532, and, Pat, it looks something 4 like this. It's an e-mail from Gene Gregory to 5 many, many, many people dated October 5th, 2006. 6 A. 552? 7 Q. 62. I'm sorry, Marcus. 562. 8 A. Okay. 9 Q. Okay. And while counsel is trying 10 to locate it, I'll tell you what I'm going to 11 direct your attention to, and I'll hold my 12 question until counsel is ready? 13 MR. STUEVE: Got it. 14 MR. BARNES: He's ready. Good. 15 He's very quick. 16 BY MR. BARNES: 17 Q. You've already testified about 18 this document, Mr. Rust. I'm going to direct 19 your attention to the second page from the end. 20 Second page from the end. And that has a 21 document identification number RAUPDATE 0080674. 22 And, again, for the record, and those playing at</p>	<p style="text-align: right;">680</p> <p>1 A. Attorney for Isaacson. 2 Q. Let me direct your attention, 3 Mr. Rust, to the second page from the end? 4 A. Okay. 5 Q. Which you're looking at. It's 6 captioned discussion. Do you see that section? 7 A. Yes. 8 Q. I direct your attention to the 9 second full paragraph from the top. 10 A. Okay. 11 Q. That language in the Brann & 12 Isaacson memorandum that was distributed within 13 UEP says, as it is currently configured, the UEP 14 certified program does not create any 15 significant risk. Do you see that language? 16 A. Yes. 17 Q. Were you ever told -- do you 18 recall ever being told that the UEP certified 19 program created any significant risk? 20 MR. STUEVE: Objection, overly 21 broad. Are you limiting that to UEP's counsel 22 or --</p>

HIGHLY CONFIDENTIAL

Rust, Marcus - Vol. II

March 6, 2014

79 (Pages 681 to 684)

<p style="text-align: right;">681</p> <p>1 MR. BARNES: Let's take UEP's 2 counsel. 3 BY MR. BARNES: 4 Q. Did UEP's counsel ever tell you 5 that their opinion, which I just read in their 6 memorandum, did they ever reverse that opinion 7 and suggest to you that -- 8 A. No. 9 Q. Let me finish my question. The 10 program does not create or does create 11 significant risk? Did you ever hear that from 12 anybody? 13 A. No. 14 MR. STUEVE: I'm just going to 15 note for the record that I think counsel has 16 waived the attorney-client privilege by asking 17 that question, and I tried to caution counsel 18 and so -- 19 MR. BARNES: I misread your 20 caution. 21 MR. STUEVE: I tried to notify 22 you, so I'm just going to note that for the</p>	<p style="text-align: right;">683</p> <p>1 MR. STUEVE: Okay. 548. 2 MR. BARNES: 548. It's the one 3 about Michaels just announced they're going into 4 the ACC program. 5 THE WITNESS: Here. I found it. 6 MR. BARNES: You got it? 7 THE WITNESS: Yes. 8 MR. BARNES: Wait until Mr. Stueve 9 locates his copy. 10 MR. STUEVE: Can you give me the 11 date on that again? 12 MR. BARNES: Yeah, the date of the 13 document is June 15, 2006. That's the first 14 e-mail at the top of the document. 15 MR. STUEVE: I've got 549, so I'm 16 getting closer. 548. 17 MR. BARNES: Great. 18 MR. STUEVE: Thank you. 19 MR. BARNES: Okay. 20 BY MR. BARNES: 21 Q. Mr. Rust, you've already been 22 asked about this document by Mr. Stueve. I just</p>
<p style="text-align: right;">682</p> <p>1 record. 2 MR. BARNES: Well, we'll have to 3 argue about that later. 4 BY MR. BARNES: 5 Q. When I said, did you ever hear 6 that from anybody, what I meant to say was 7 anybody other than the Brann Isaacson lawyers 8 who are not your lawyers? 9 A. No. 10 Q. Okay. All right. Next exhibit I 11 would like to refer you to is 548. 548. It 12 bears identification number RAUPDATE 0034691 13 it's a one-page document dated June 15, 2006, 14 from you to Mr. Brad Ginnane? 15 A. What's the number again? 16 Q. 548. 17 MR. STUEVE: I'm sorry, what was 18 the exhibit number? 19 MR. BARNES: It was 548, Pat, it 20 was the June 15, 2006, e-mail series between 21 Marcus and Brad Ginnane. I'll give you a minute 22 to find it.</p>	<p style="text-align: right;">684</p> <p>1 have one question for you. Mr. Stueve directed 2 your attention and asked you to read the 3 sentence under the middle e-mail the middle 4 e-mail from you to Mr. Ginnane dated Thursday, 5 June 15th. And he asked you to read that 6 language which says, Brad, Michaels just 7 announced they are going into the ACC program 8 and that alone will cause market to go up. Do 9 you see that language? 10 A. Yes. 11 MR. STUEVE: Objection to the form 12 of the question. 13 BY MR. BARNES: 14 Q. What market were you referring to 15 when you sent that e-mail to -- 16 A. Egg white. 17 Q. The egg white market? 18 A. Yeah. Egg white powder 19 specifically. 20 Q. Okay. What was marked 134 -- now, 21 this was a Capper-Volstead referenced document 22 to help counsel locate it. It was a --</p>

HIGHLY CONFIDENTIAL

Rust, Marcus - Vol. II

March 6, 2014

80 (Pages 685 to 688)

<p style="text-align: right;">685</p> <p>1 A. What number?</p> <p>2 MR. BARNES: 134. It's -- the</p> <p>3 first page appears to be an e-mail from Roger</p> <p>4 Deffner to you, dated February 8th, 2006. And</p> <p>5 the subject is Capper-Volstead and it states</p> <p>6 attachments Capper-Volstead summary pdf.</p> <p>7 Capper-Volstead summary pdf.</p> <p>8 I'm not going to ask you about the</p> <p>9 whole thing, you've already testified about</p> <p>10 this, Mr. Rust. While counsel is locating the</p> <p>11 document -- I'm not going to ask him any</p> <p>12 questions until you find it.</p> <p>13 MR. MONICA: It's 134.</p> <p>14 MR. BARNES: 134. First page is</p> <p>15 Roger Deffner to Marcus.</p> <p>16 MR. STUEVE: Hold on. I'm</p> <p>17 missing -- I'm sorry, it's right here, I got it.</p> <p>18 MR. BARNES: I'm just going to</p> <p>19 direct his attention.</p> <p>20 MR. STUEVE: I got it. Thank you.</p> <p>21 BY MR. BARNES:</p> <p>22 Q. Mr. Rust, I just want to direct</p>	<p style="text-align: right;">687</p> <p>1 become members." Do you see that?</p> <p>2 A. Yes.</p> <p>3 Q. Was that your understanding?</p> <p>4 A. Yes.</p> <p>5 Q. The other sentence I would like to</p> <p>6 direct your attention to, if you will turn after</p> <p>7 that page to the third page after that page?</p> <p>8 A. Third page after that page?</p> <p>9 Q. Right. This is in the Isaacson</p> <p>10 opinion letter. It's the bottom identification</p> <p>11 number is RA 0085511. 5511.</p> <p>12 A. Okay.</p> <p>13 Q. Wait a second. That's the</p> <p>14 wrong -- that's the wrong page.</p> <p>15 A. You got your tag covered up.</p> <p>16 Q. Yeah. I'm sorry. I directed you</p> <p>17 to the wrong page. Excuse me. It's getting</p> <p>18 late.</p> <p>19 What I meant to direct your</p> <p>20 attention to was the second page of the Brann &</p> <p>21 Isaacson opinion.</p> <p>22 MR. STUEVE: Are we still on</p>
<p style="text-align: right;">686</p> <p>1 your attention to a couple of lines in an</p> <p>2 attachment to this document. If you could go to</p> <p>3 the fifth page, fifth page from the beginning</p> <p>4 and that has a document identification number of</p> <p>5 RA 0085507.</p> <p>6 A. Okay.</p> <p>7 Q. Find it?</p> <p>8 A. Yes.</p> <p>9 Q. The very -- and, again, this</p> <p>10 appears to be a memo from Irving Isaacson to</p> <p>11 Mr. Al Pope, RE: Capper-Volstead qualification</p> <p>12 dated February 4, 1992. Do you see that?</p> <p>13 A. Yes.</p> <p>14 Q. Now, I would like to direct your</p> <p>15 attention to the first paragraph.</p> <p>16 A. Okay.</p> <p>17 Q. Okay. Under legal basis for</p> <p>18 agriculture cooperative antitrust exemption.</p> <p>19 And the second sentence in that first paragraph</p> <p>20 states, "the bylaws of UEP and its regional</p> <p>21 members are very carefully framed to allow only</p> <p>22 bona fide agricultural producers or farmers to</p>	<p style="text-align: right;">688</p> <p>1 Exhibit 134?</p> <p>2 MR. BARNES: Yes, we are. This,</p> <p>3 Pat, is the memo from Irving Isaacson to Al Pope</p> <p>4 RE: Capper-Volstead qualification, February 4,</p> <p>5 1992, which was an attachment to Exhibit 134.</p> <p>6 BY MR. BARNES:</p> <p>7 Q. And, Marcus, I would like to</p> <p>8 direct your attention to the second page?</p> <p>9 MR. STUEVE: Can you give me a</p> <p>10 Bates number?</p> <p>11 MR. BARNES: Yes. I'm sorry.</p> <p>12 It's RA 0085508.</p> <p>13 BY MR. BARNES:</p> <p>14 Q. Now, if you look at the bottom</p> <p>15 paragraph in the Brann & Isaacson opinion</p> <p>16 letter, beginning with the second sentence in</p> <p>17 the bottom paragraph. It says, if we had not</p> <p>18 had Capper-Volstead protection, UEP as such</p> <p>19 would not be in existence today and egg</p> <p>20 producers would have suffered greatly as a</p> <p>21 result. In 1970, the legal status of UEP as a</p> <p>22 federated agriculture cooperative was approved</p>

HIGHLY CONFIDENTIAL

Rust, Marcus - Vol. II

March 6, 2014

81 (Pages 689 to 692)

<p style="text-align: right;">689</p> <p>1 by the Federal District Court in New York in the</p> <p>2 case of UEP versus Bauer, B-A-U-E-R,</p> <p>3 International. In other words, UEP has been</p> <p>4 recognized as a legal agricultural cooperative</p> <p>5 by the courts provided of course that its</p> <p>6 membership retains status as producers or</p> <p>7 farmers. Is that your understanding, Mr. Rust?</p> <p>8 A. Yes.</p> <p>9 Q. Okay. Let's -- we're almost</p> <p>10 finished. You're very patient.</p> <p>11 I'm going to ask you to locate two</p> <p>12 exhibits that are related. The first is</p> <p>13 Exhibit 111, and that is a document</p> <p>14 identification MOARK 0001079.</p> <p>15 A. Okay.</p> <p>16 Q. It appears to be the minutes of</p> <p>17 the UEP shell egg Marketing Committee conference</p> <p>18 call, June 1, 2005. That's the first document.</p> <p>19 MR. STUEVE: What's the exhibit</p> <p>20 number?</p> <p>21 MR. BARNES: It's 111, Pat.</p> <p>22 MR. STUEVE: Okay.</p>	<p style="text-align: right;">691</p> <p>1 Q. Do you have that document -- both</p> <p>2 of those documents in front of you, Mr. Rust?</p> <p>3 A. Yes.</p> <p>4 Q. Now, directing your attention to</p> <p>5 the second page of Exhibit 111, would you turn</p> <p>6 there, please, second page of 111. At the top</p> <p>7 of that page, Mr. Stueve directed your attention</p> <p>8 to a motion. See at the very top of the page?</p> <p>9 A. Yeah.</p> <p>10 Q. It says, Motion: It was moved by</p> <p>11 Osborn and seconded by Schimpf, that UEP</p> <p>12 distribute an economic alert to the members and</p> <p>13 that the alert include a price forecast and a</p> <p>14 list much possible options to correct the</p> <p>15 oversupply problem, and it says the motion</p> <p>16 carried.</p> <p>17 Do you remember testifying about</p> <p>18 that?</p> <p>19 A. Yes.</p> <p>20 Q. Okay. Now, at the time of this</p> <p>21 meeting, based on the language of that motion,</p> <p>22 had an economic alert already been prepared?</p>
<p style="text-align: right;">690</p> <p>1 MR. BARNES: Previously marked</p> <p>2 somewhere else.</p> <p>3 MR. STUEVE: What's the date on</p> <p>4 that?</p> <p>5 MR. BARNES: June 1, 2005.</p> <p>6 MR. STUEVE: Okay. I've got it.</p> <p>7 MR. BARNES: I would give you my</p> <p>8 copy, but I've got it marked up.</p> <p>9 MR. STUEVE: It's my lucky day, I</p> <p>10 opened it up to the -- right to Exhibit 111.</p> <p>11 MR. BARNES: Marvelous.</p> <p>12 BY MR. BARNES:</p> <p>13 Q. Now, before I ask you anything</p> <p>14 about Exhibit 111, Mr. Rust, I would like you to</p> <p>15 also locate Exhibit 117, which Mr. Stueve, I</p> <p>16 believe, has already established is related to</p> <p>17 Exhibit 111.</p> <p>18 Exhibit 117 bears the</p> <p>19 identification number UE 07932299. It's</p> <p>20 Exhibit 117. It's captioned, Egg Industry</p> <p>21 Economic Alert.</p> <p>22 BY MR. BARNES:</p>	<p style="text-align: right;">692</p> <p>1 A. Not that I recollect.</p> <p>2 Q. Let me show you what is</p> <p>3 Exhibit 117, which I think Mr. Stueve has</p> <p>4 already established that this was the economic</p> <p>5 alert that resulted from the motion in</p> <p>6 Exhibit 111 that we've just referred to. And</p> <p>7 let me ask you, Mr. Rust, as a member of that</p> <p>8 shell egg Marketing Committee referenced in</p> <p>9 Exhibit 111, do you recall whether Exhibit 117,</p> <p>10 the actual economic alert, was ever distributed</p> <p>11 to the members of the shell egg Marketing</p> <p>12 Committee?</p> <p>13 A. I don't recall it being.</p> <p>14 Q. Do you recall that the shell egg</p> <p>15 Marketing Committee ever voted to approve and</p> <p>16 distribute what has been marked as Exhibit 117?</p> <p>17 A. No.</p> <p>18 Q. Okay. We are almost there.</p> <p>19 MR. BARNES: Now, what is our next</p> <p>20 Exhibit Number? Do we have that, David?</p> <p>21 MR. HICKEY: Yeah.</p> <p>22 MR. BARNES: You're wonderful.</p>

HIGHLY CONFIDENTIAL

Rust, Marcus - Vol. II

March 6, 2014

82 (Pages 693 to 696)

<p style="text-align: right;">693</p> <p>1 I'm bringing you to my next deposition. 2 MR. HICKEY: No, you're not. 3 (Rust Exhibit Number 571 was 4 marked for identification.) 5 MR. BARNES: We've just marked 6 this as Rust Exhibit 571. I'm going to hand 7 that to the witness, and I'm going to hand that 8 to Mr. Stueve. And I need one copy. Can you 9 share it with Pat, David? I'm sorry -- here you 10 go. Joe is going to give you his. 11 MR. STUEVE: I object to these 12 questions beyond the scope of my examination. 13 MR. BARNES: Well, it might have 14 been beyond the scope of your examination, but 15 it is not beyond the scope of the representation 16 you made on the record, Mr. Stueve. You stated 17 very clearly that your client, AWG, never had a 18 specification for the purchase of shell eggs 19 that required UEP animal husbandry 20 certification. You stated that on the record. 21 MR. STUEVE: Sir, that was not the 22 result of any questioning. That was -a.</p>	<p style="text-align: right;">695</p> <p>1 that this goes beyond the designation of this 2 witness with respect to Greg Hinton is the one 3 who was identified with respect to pricing. So 4 it's beyond the scope of his designation. 5 MR. MONICA: He's also produced 6 individually. You know that. 7 MR. STUEVE: Look, guys, all I'm 8 telling you, this is beyond the scope. You can 9 review the record, I didn't ask him any 10 questions about any bidding process, so it's 11 beyond the scope. Go ahead. If you want to go 12 down this road, I've noted my objection. I 13 can't stop you from doing it. 14 MR. BARNES: You noted your 15 objection, but I just want to be clear. Your 16 position is if a witness, a 30(b)(6) witness has 17 not been designated for a particular subject 18 matter, that witness cannot be interrogated on 19 another subject. You cannot go outside the 20 30(b)(6) designation in interrogating the 21 witness. Is that your position? 22 MR. STUEVE: That's not my</p>
<p style="text-align: right;">694</p> <p>1 MR. BARNES: Gratuitous -- 2 MR. STUEVE: It was not a 3 gratuitous statement, and it's in fact the 4 truth, that it was not a question I asked this 5 witness, so you can go down this road, but this 6 -- this is beyond the scope of my examination, 7 and I object to it. 8 MR. BARNES: You also promised, if 9 you recall, and the record will reflect, that 10 you would come back to the issue. 11 MR. STUEVE: I didn't start the 12 issue. 13 MR. BARNES: Well, you did. You 14 stated -- and you said you would come back to 15 it. 16 MR. STUEVE: I didn't start the 17 issue. 18 MR. BARNES: So I am fulfilling 19 your promise to the court and the jury, we are 20 coming back to the issue. You can object. Your 21 objection is noted on the record. 22 MR. STUEVE: I would also note</p>	<p style="text-align: right;">696</p> <p>1 position. 2 MR. BARNES: That's what you said 3 on the record. 4 MR. STUEVE: You -- my point was 5 that I did not ask him questions concerning 6 these topics, because he was not designated with 7 respect to those topics. 8 MR. BARNES: Well, the record will 9 show what it shows. Let's just -- let me ask 10 him the question, so we can go home. All right? 11 Your objection is noted. 12 MR. STUEVE: I get a continuing 13 objection. 14 MR. BARNES: You certainly do. 15 MR. STUEVE: Okay. Fair enough. 16 BY MR. BARNES: 17 Q. Mr. Rust, directing your attention 18 to Exhibit 571, it is labeled product 19 specification. Can you tell from the front of 20 this document whose product specification this 21 is? 22 A. AWG.</p>

HIGHLY CONFIDENTIAL

Rust, Marcus - Vol. II

March 6, 2014

83 (Pages 697 to 700)

<p style="text-align: right;">697</p> <p>1 Q. And that's a company suing you; 2 right?</p> <p>3 A. Yeah.</p> <p>4 Q. Okay. Would you look, Mr. Rust, 5 in the product specification description section 6 regarding shell eggs?</p> <p>7 A. Yeah.</p> <p>8 Q. And it has a number of 9 requirements in that section; does it not?</p> <p>10 A. Yeah. It does.</p> <p>11 Q. Would you look at the last 12 sentence in that description section?</p> <p>13 A. Yeah.</p> <p>14 Q. Could you read that sentence into 15 the record, please?</p> <p>16 A. All eggs must be produced from 17 hens certified to be managed in compliance with 18 the United Egg Producer animal husbandry 19 guidelines.</p> <p>20 MR. BARNES: Thank you, Mr. Rust, 21 I have no further questions. Oh, wait a minute. 22 I'm sorry, we have one clean up item.</p>	<p style="text-align: right;">699</p> <p>1 with your counsel about what he was going to ask 2 you; right?</p> <p>3 A. We went over different documents, 4 yeah.</p> <p>5 Q. He told you what he was going to 6 ask you; right?</p> <p>7 A. Yeah.</p> <p>8 Q. Now, let's look at the document he 9 just put in front of you with respect to the -- 10 MR. BARNES: AWG.</p> <p>11 BY MR. STUEVE:</p> <p>12 Q. The product specifications here?</p> <p>13 A. Yeah.</p> <p>14 Q. Were you involved in the bidding 15 of the 2013 -- the process of bidding for the 16 business of AWG?</p> <p>17 A. Yeah.</p> <p>18 Q. What was your role?</p> <p>19 A. I was asked multiple questions 20 about whether or not we wanted to bid since they 21 were you suing us or not.</p> <p>22 Q. Who asked you that?</p>
<p style="text-align: right;">698</p> <p>1 MR. STUEVE: We can do that after. 2 Let me get my questions. We'll do that at the 3 end.</p> <p>4 EXAMINATION BY COUNSEL FOR PLAINTIFFS 5 BY MR. STUEVE:</p> <p>6 Q. Let me start out by asking you, 7 Mr. Rust, there was a significant break between 8 my questioning and the questioning of your 9 counsel; is that correct?</p> <p>10 MR. BARNES: Well, I object to 11 that. It was --</p> <p>12 BY MR. STUEVE:</p> <p>13 Q. There was a break between my 14 questioning and when your counsel started asking 15 questions?</p> <p>16 MR. BARNES: It was a short break.</p> <p>17 THE WITNESS: A short break, yeah.</p> <p>18 BY MR. STUEVE:</p> <p>19 Q. And you met with your counsel 20 during that?</p> <p>21 A. Yeah.</p> <p>22 Q. And you discussed the questions</p>	<p style="text-align: right;">700</p> <p>1 A. Greg Hinton.</p> <p>2 Q. No. What I'm talking about is, 3 did you have any communications directly with 4 AWG?</p> <p>5 A. No.</p> <p>6 Q. Did you have any discussions with 7 AWG about what in fact were the specifications 8 they were looking for in the bidding process?</p> <p>9 A. No. Only discussions with Greg.</p> <p>10 Q. Mr. Hinton would have been the one 11 who would have had those discussions; right?</p> <p>12 A. Yeah.</p> <p>13 Q. Now, do you know if these are all 14 of the specifications that Rose Acre asked from 15 AWG concerning the 2013 bid?</p> <p>16 MR. BARNES: Object to the form.</p> <p>17 THE WITNESS: I can't say for all.</p> <p>18 BY MR. STUEVE:</p> <p>19 Q. Okay. It bid not only on -- on 20 best choice shell eggs, but it bid on specialty 21 eggs as well; correct?</p> <p>22 A. I would assume so.</p>

HIGHLY CONFIDENTIAL

Rust, Marcus - Vol. II

March 6, 2014

84 (Pages 701 to 704)

<p style="text-align: right;">701</p> <p>1 Q. Do you know if the specifications 2 for the specialty eggs required UEP certified? 3 A. It says fresh shell eggs. 4 Q. Is your assumption that it did? 5 A. I would assume that it would. I 6 don't know. 7 Q. Now, sir, your counsel has been at 8 the deposition of the individual responsible for 9 the document that's in front of you, and she 10 testified under oath that the actual wording 11 that is contained in here, including the words 12 that were read by your counsel, were actually 13 typed into this form document by MOARK, which 14 was the current supplier of AWG. Are you aware 15 of that, sir? 16 MR. MONICA: That's not what she 17 said. It's a misrepresentation. 18 MR. BARNES: I object to the 19 testimony by Mr. Stueve representing what 20 another witness said in another deposition. I 21 object to that. That testimony says what it 22 says and if he has a copy and wants to show it</p>	<p style="text-align: right;">703</p> <p>1 Q. Yeah. 2 A. I assume them to be. Yeah. 3 Q. And so it would not be a surprise 4 to you that if MOARK prepared the specifications 5 for the eggs that it was providing AWG that it 6 would include in its specifications that its 7 eggs were UEP certified; correct? 8 MR. BARNES: Object. Object to 9 the form of the question. If the witness can 10 answer it, go ahead. 11 THE WITNESS: My general 12 knowledge, most egg customers we deal with they 13 write the specifications, and we only supply 14 what they tell us to supply. 15 MR. STUEVE: Move to strike the 16 answer as nonresponsive. I'm going to ask you 17 to read my question back to him and ask you to 18 answer my question. 19 MR. BARNES: It is responsive. 20 What he's saying, Pat, is the obvious. It's 21 unusual for a company -- 22 MR. STUEVE: Counsel. Counsel, no</p>
<p style="text-align: right;">702</p> <p>1 to us, that's fine, but I object to him using -- 2 characterizing another witness's testimony, 3 another of his client's testimony to try to 4 undermine what his own document says. 5 BY MR. STUEVE: 6 Q. Go ahead and answer my question, 7 sir? 8 A. Repeat your question. 9 MR. STUEVE: Read it back to him. 10 (The record was read as 11 requested.) 12 MR. BARNES: Objection. 13 THE WITNESS: No. 14 BY MR. STUEVE: 15 Q. And sir, you were aware that prior 16 to Rose Acre submitting a bid in 2013, that 17 MOARK was the exclusive supplier of shell eggs 18 to AWG; correct? 19 A. I did not know that. 20 Q. You are aware that, in fact, they 21 are UEP certified; right? 22 A. MOARK?</p>	<p style="text-align: right;">704</p> <p>1 speaking objections. 2 (The record was read as 3 requested.) 4 MR. BARNES: Objection. Go ahead. 5 THE WITNESS: It would surprise me 6 that a supermarket chain or seller would allow a 7 supplier to write the specification of their 8 brand. 9 BY MR. STUEVE: 10 Q. Assuming that the documents that 11 have been produced in this case in fact show 12 that AWG asked MOARK to prepare the 13 specifications for MOARK's eggs, would it 14 surprise you that MOARK would include that its 15 eggs were UEP certified? 16 MR. BARNES: Object to the form. 17 THE WITNESS: Repeat your 18 question. 19 MR. STUEVE: You can go ahead. 20 (The record was read as 21 requested.) 22 MR. BARNES: Object to the form.</p>

HIGHLY CONFIDENTIAL

Rust, Marcus - Vol. II

March 6, 2014

85 (Pages 705 to 708)

<p style="text-align: right;">705</p> <p>1 Calls for speculation.</p> <p>2 THE WITNESS: Are you saying that</p> <p>3 MOARK specified the egg? I'm not sure what</p> <p>4 you're saying there.</p> <p>5 BY MR. STUEVE:</p> <p>6 Q. Sir, when you -- let me ask you</p> <p>7 this. Can you answer my question that I asked</p> <p>8 you?</p> <p>9 A. If I can understand it.</p> <p>10 MR. BARNES: Objection.</p> <p>11 MR. STUEVE: Let me have her read</p> <p>12 it back one more time. Have her read it back</p> <p>13 and tell me what you don't understand.</p> <p>14 THE WITNESS: I'm not a lawyer,</p> <p>15 I'm a chicken farmer.</p> <p>16 BY MR. STUEVE:</p> <p>17 Q. Let me just ask it this way, so we</p> <p>18 can make it a little simpler.</p> <p>19 If in fact AWG asked MOARK to</p> <p>20 write the specifications for the eggs that MOARK</p> <p>21 was providing to AWG, would it surprise you that</p> <p>22 MOARK would list as one of those specifications</p>	<p style="text-align: right;">707</p> <p>1 specifically the quality assurance department;</p> <p>2 is that correct?</p> <p>3 A. It doesn't say that.</p> <p>4 Q. That's what it says; right?</p> <p>5 A. It says any variation in these</p> <p>6 specifications must be preapproved by Associated</p> <p>7 Wholesale Grocers quality assurance department.</p> <p>8 Q. Right. So it puts you on notice</p> <p>9 that if you want to change one of these</p> <p>10 specifications that's in this document that you</p> <p>11 contact Associated Wholesale Grocers quality</p> <p>12 assurance department; right?</p> <p>13 MR. BARNES: Objection, document</p> <p>14 speaks for itself.</p> <p>15 BY MR. STUEVE:</p> <p>16 Q. That's what it says; right?</p> <p>17 A. I'm reading -- I read you what it</p> <p>18 says.</p> <p>19 Q. Now, in 2013, do you know who were</p> <p>20 the folks who bid on the AWG's business besides</p> <p>21 Rose Acre?</p> <p>22 A. I have no way of knowing that.</p>
<p style="text-align: right;">706</p> <p>1 that its eggs are UEP certified?</p> <p>2 MR. BARNES: Object to the form of</p> <p>3 the question. There are two speculative</p> <p>4 questions rolled into one. If you can answer</p> <p>5 it, go ahead.</p> <p>6 THE WITNESS: I have no knowledge.</p> <p>7 BY MR. STUEVE:</p> <p>8 Q. You know they're UEP certified;</p> <p>9 right, MOARK?</p> <p>10 A. I assume they are.</p> <p>11 Q. Now, if you look back at the</p> <p>12 document that's in front of you, at the very</p> <p>13 top, it says, notice, any variations in these</p> <p>14 specifications must be preapproved by Associated</p> <p>15 Wholesale Grocers quality assurance department.</p> <p>16 Do you see that?</p> <p>17 A. Where is that at?</p> <p>18 Q. Right at the very top in all caps.</p> <p>19 A. Okay.</p> <p>20 Q. It specifically notifies Rose Acre</p> <p>21 that, hey, if you want to change one of these</p> <p>22 specifications, you can contact us and</p>	<p style="text-align: right;">708</p> <p>1 Q. Mr. Hinton would know that; right?</p> <p>2 A. Not necessarily.</p> <p>3 Q. Do you know if there are -- if</p> <p>4 there were any -- you just don't know who</p> <p>5 submitted the bids; is that correct?</p> <p>6 A. Most -- any bid situation I've</p> <p>7 ever been in, all we're usually told are there</p> <p>8 are other suppliers bidding.</p> <p>9 MR. BARNES: Pat, before you go</p> <p>10 on --</p> <p>11 BY MR. STUEVE:</p> <p>12 Q. Do you know what percentage of the</p> <p>13 shell egg production in the United States in</p> <p>14 2013, what percentage of those eggs are UEP</p> <p>15 certified?</p> <p>16 A. Not exactly, I wouldn't.</p> <p>17 Q. It would be over 90 percent?</p> <p>18 MR. BARNES: Objection. Object to</p> <p>19 the form.</p> <p>20 THE WITNESS: I would have to look</p> <p>21 at a record someplace. I have no memory of what</p> <p>22 that percentage would be.</p>

HIGHLY CONFIDENTIAL

Rust, Marcus - Vol. II

March 6, 2014

86 (Pages 709 to 712)

<p style="text-align: right;">709</p> <p>1 BY MR. STUEVE:</p> <p>2 Q. It's substantial; right?</p> <p>3 A. It would be substantial, but I</p> <p>4 have no memory of what the percentage would be.</p> <p>5 MR. BARNES: And excuse me, Pat.</p> <p>6 Could I just ask a question?</p> <p>7 MR. STUEVE: No.</p> <p>8 MR. BARNES: I want to ask you a</p> <p>9 question.</p> <p>10 MR. STUEVE: No, I'm in my</p> <p>11 examination. If you would --</p> <p>12 MR. BARNES: I'll hold it until</p> <p>13 you're finished, then I'll ask you. Go ahead.</p> <p>14 BY MR. STUEVE:</p> <p>15 Q. Sir, if you could look back at</p> <p>16 Exhibit 111, your counsel was asking you a</p> <p>17 question about this and 117. Do you have that?</p> <p>18 A. I'm finding 117. Yeah.</p> <p>19 Q. And, first of all, I want the</p> <p>20 record to be clear, that you were at the</p> <p>21 Marketing Committee, and there in fact was a</p> <p>22 vote, and that motion was carried that</p>	<p style="text-align: right;">711</p> <p>1 question.</p> <p>2 BY MR. STUEVE:</p> <p>3 Q. Yeah. Consistent with the motion</p> <p>4 that was carried at the Marketing Committee that</p> <p>5 you were at, Exhibit 117, the economic alert,</p> <p>6 includes the possible solutions to correct the</p> <p>7 oversupply problem; right?</p> <p>8 MR. BARNES: Object to the form.</p> <p>9 THE WITNESS: It includes possible</p> <p>10 solutions.</p> <p>11 BY MR. STUEVE:</p> <p>12 Q. And all of those pertain that are</p> <p>13 under the possible solutions, to the oversupply</p> <p>14 problem; correct?</p> <p>15 MR. BARNES: Object to the form.</p> <p>16 THE WITNESS: Could be.</p> <p>17 BY MR. STUEVE:</p> <p>18 Q. Well, the first one is dispose of</p> <p>19 spent hens 4 weeks earlier than previously</p> <p>20 scheduled and/or reduce your flock size by</p> <p>21 5 percent through Labor Day?</p> <p>22 A. Voluntary suggestion, but yeah.</p>
<p style="text-align: right;">710</p> <p>1 Mr. Gregory was to in fact issue an economic</p> <p>2 alert and include in that a price forecast and a</p> <p>3 list of possible solutions to correct the</p> <p>4 oversupply problem; right?</p> <p>5 MR. BARNES: Object to the form.</p> <p>6 THE WITNESS: Yeah.</p> <p>7 BY MR. STUEVE:</p> <p>8 Q. And if the committee takes action,</p> <p>9 and it's approved, Mr. Gregory is to follow</p> <p>10 that; correct?</p> <p>11 A. Correct.</p> <p>12 Q. And consistent with the direction</p> <p>13 of the committee, Exhibit 117 is an egg industry</p> <p>14 economic alert; correct?</p> <p>15 A. Yeah.</p> <p>16 Q. And consistent with the direction</p> <p>17 of the Marketing Committee, that economic alert</p> <p>18 includes the possible options to correct the</p> <p>19 oversupply problem; correct, sir?</p> <p>20 MR. BARNES: Object to the form of</p> <p>21 the question.</p> <p>22 THE WITNESS: Repeat your</p>	<p style="text-align: right;">712</p> <p>1 Q. That pertains to the oversupply</p> <p>2 problem; right?</p> <p>3 A. It's a voluntary suggestion.</p> <p>4 Q. That applies to the oversupply</p> <p>5 problem; correct, sir?</p> <p>6 A. As some perceived it. Yes.</p> <p>7 Q. Number 2 is delay the hatch of all</p> <p>8 flocks. That pertains to the oversupply</p> <p>9 problem; correct, sir?</p> <p>10 A. That's a possible solution.</p> <p>11 Q. Number 3, reduce all hatches by</p> <p>12 5 percent for the next 6 weeks pertains to the</p> <p>13 oversupply problem; correct, sir?</p> <p>14 MR. BARNES: Object to the form.</p> <p>15 Misstates the language of the document.</p> <p>16 BY MR. STUEVE:</p> <p>17 Q. Right?</p> <p>18 A. Listed as a possible solution.</p> <p>19 Q. Increase the hen disposal rate,</p> <p>20 reduce the chicken hatch, leave some houses</p> <p>21 empty, we'll make money, pertains to the</p> <p>22 oversupply problem; right, sir?</p>

HIGHLY CONFIDENTIAL

Rust, Marcus - Vol. II

March 6, 2014

87 (Pages 713 to 716)

<p style="text-align: right;">713</p> <p>1 A. It is listed as a possible 2 solution on this paper. 3 Q. If you're selling surplus eggs to 4 the breakers, reduce your flock size. That 5 pertains to the oversupply problem; correct, 6 sir? 7 A. It is listed on this paper. I did 8 not vote on this paper. 9 Q. Now, you were also asked questions 10 by counsel after your prep session? 11 MR. BARNES: Object to -- 12 BY MR. STUEVE: 13 Q. Exhibit 134; right? Do you have 14 134 in front of you? 15 A. Yeah. 16 Q. Now, counsel directed your 17 attention to a few pages in this document; 18 right? Do you remember that? 19 A. A couple. 20 Q. All right. And then there was an 21 earlier document, I believe, and we'll get to 22 it, but it also pertained to legal advice that</p>	<p style="text-align: right;">715</p> <p>1 Misstates the evidence. 2 BY MR. STUEVE: 3 Q. That's what it states; right? 4 MR. BARNES: That's not what it 5 states. 6 MR. STUEVE: Counsel, will you 7 stop using speaking objections. 8 MR. BARNES: Well, you're 9 distorting the record, Mr. Stueve, you're 10 stating things that are not in the document. 11 BY MR. STUEVE: 12 Q. Sir, do you have the document in 13 front of you? 14 A. Yeah. 15 Q. This is the Brann & Isaacson firm, 16 counsel to UEP, this was advice that was shared 17 with you; correct? 18 A. Yeah. 19 Q. In 2004; correct? 20 A. Yeah. 21 Q. And under the following activities 22 that are probably not protected, they made clear</p>
<p style="text-align: right;">714</p> <p>1 you had seen from Brann & Isaacson concerning 2 UEP. Do you remember those questions? 3 A. Vaguely. 4 Q. Okay. Now, that same firm is the 5 firm that's providing the legal advice in both 6 of the documents that you're looking at; right? 7 A. Yeah. 8 Q. And that firm, if you look at page 9 505? 10 MR. BARNES: Of 134? 11 MR. STUEVE: Yep. Of 134. 12 BY MR. STUEVE: 13 Q. Do you see under activities, are 14 probably not protected. Do you see that? Do 15 you see that listed there? See the activities 16 under are not protected? 17 A. Yeah. 18 Q. That firm made it clear that UEP 19 members could not boycott nonmembers of the 20 cooperative; right? 21 MR. BARNES: Object to the form of 22 the question. It misstates the document.</p>	<p style="text-align: right;">716</p> <p>1 that UEP members cannot boycott nonmembers; 2 correct? 3 MR. BARNES: Probably. 4 MS. LEVINE: Object to the form. 5 BY MR. STUEVE: 6 Q. Do you see that? 7 A. I see where it says the following 8 activities probably are not protected. 9 Q. Underneath that, it says that UEP 10 members may not or cannot boycott nonmembers of 11 the cooperative; right? 12 MR. BARNES: Object to the form. 13 THE WITNESS: I read what it says 14 it says boycott of nonmembers of cooperative. 15 BY MR. STUEVE: 16 Q. And then it says under the 17 category probably not protected, that UEP 18 members cannot coerce nonmembers to join the 19 cooperative; correct? 20 MR. BARNES: Objection. Asked and 21 answered. 22 Mr. Stueve, you've been through</p>

HIGHLY CONFIDENTIAL

Rust, Marcus - Vol. II

March 6, 2014

88 (Pages 717 to 720)

<p style="text-align: right;">717</p> <p>1 this once. You know, it's tough enough to go 2 through it once, but you go through it 3 repeatedly. It's asked and answered. 4 MR. STUEVE: Go ahead and answer 5 my question, sir. 6 A. Which one again? 7 MR. STUEVE: Read it back to him. 8 (The record was read as 9 requested.) 10 MR. BARNES: Same objection. 11 THE WITNESS: What are you asking? 12 BY MR. STUEVE: 13 Q. That's what you were being 14 advised? 15 A. You're making a statement, I don't 16 know what you're asking. 17 Q. That's what you were being 18 advised; correct, sir? 19 A. I'm reading what it says here. 20 Q. And what it says is that you were 21 not to "coerce nonmembers to join the 22 cooperative;" right?</p>	<p style="text-align: right;">719</p> <p>1 THE WITNESS: I'll repeat what it 2 says here that there should be -- the writing 3 says there should be no efforts to coerce 4 nonmembers to join UEP. 5 BY MR. STUEVE: 6 Q. All right. Now, you were also 7 directed to 548, the middle sentence -- the 8 middle e-mail that you prepared June 15th, 2006; 9 right? 10 A. Yeah. 11 Q. The event that you attributed your 12 belief that the market would go up was Michael 13 Foods' announcement that it was going into the 14 certified program, and therefore was going to be 15 required to comply with cage space requirements; 16 correct, sir? 17 MR. BARNES: Objection to the 18 form. Asked and answered. 19 THE WITNESS: That's what that -- 20 I'm not following what you're asking. You're 21 reading a statement that says that here, so what 22 are you asking?</p>
<p style="text-align: right;">718</p> <p>1 A. It says the following activities 2 are probably not protected and that is listed 3 underneath that statement there. 4 Q. And then over on the next page, 5 again, under some absolutes, do you see that? 6 A. Yeah. 7 Q. It says under the absolute, there 8 should be no attempt to boycott or curtail 9 business with a nonmember regarding failure to 10 follow guidelines or for that matter regarding 11 any other issues. Did I read that correctly, 12 sir? 13 MR. BARNES: Object to the form. 14 Asked and answered. 15 THE WITNESS: That is what you are 16 reading there. Yeah. 17 BY MR. STUEVE: 18 Q. It also says under absolutes, 19 there should be no efforts to coerce nonmembers 20 to join UEP; correct, sir? 21 MR. BARNES: Same objection. 22 Document speaks for itself.</p>	<p style="text-align: right;">720</p> <p>1 MR. STUEVE: If you could read 2 back my question, and I ask for you to answer 3 it. 4 (The record was read as 5 requested.) 6 MR. BARNES: Same objection. 7 THE WITNESS: I'm still not sure 8 what you're asking me to refer to. 9 BY MR. STUEVE: 10 Q. The event that you believed would 11 result in the market going up was Michael Foods 12 joining the certified program and now being 13 required to comply with cage space requirements; 14 correct, sir? 15 MR. BARNES: Same objection. 16 THE WITNESS: What are you asking 17 about? 18 BY MR. STUEVE: 19 Q. Is that correct? If you could 20 read back my question, and listen to my question 21 and answer it for me, sir. 22 (The record was read as</p>

HIGHLY CONFIDENTIAL

Rust, Marcus - Vol. II

March 6, 2014

89 (Pages 721 to 724)

<p style="text-align: right;">721</p> <p>1 requested.)</p> <p>2 THE WITNESS: Yeah.</p> <p>3 BY MR. STUEVE:</p> <p>4 Q. Now, you -- your counsel asked you</p> <p>5 questions and used the term violence concerning</p> <p>6 actions by the Humane Society; is that correct?</p> <p>7 A. Yeah.</p> <p>8 Q. Now, sir, you've been very vague</p> <p>9 in your testimony about these alleged actions</p> <p>10 that occurred at Rose Acre, so I want to hear</p> <p>11 specifically. You mentioned that there was and</p> <p>12 you refer to your mom's note about a -- about</p> <p>13 one truck burned up. Do you remember that</p> <p>14 reference?</p> <p>15 MR. BARNES: Object to the form of</p> <p>16 the question, and object to Mr. Stueve's</p> <p>17 testimony. He wasn't vague about his</p> <p>18 description of the activities by the animal</p> <p>19 rights activists.</p> <p>20 THE WITNESS: There are multiple</p> <p>21 things.</p> <p>22 BY MR. STUEVE:</p>	<p style="text-align: right;">723</p> <p>1 Q. Did the burnt truck, did that</p> <p>2 occur in 2002?</p> <p>3 A. I don't recollect the exact time</p> <p>4 it took place.</p> <p>5 Q. Could it have been several years</p> <p>6 before 2002, sir?</p> <p>7 A. It could have been a day before</p> <p>8 2002. It could have been 2002. It could have</p> <p>9 been 2001, 1999. I don't recall the exact -- I</p> <p>10 would have to look at a document.</p> <p>11 Q. What other -- you identified a</p> <p>12 burnt truck; is that correct?</p> <p>13 A. Correct.</p> <p>14 Q. And that other event did you say</p> <p>15 occurred?</p> <p>16 A. They spray painted up on the side</p> <p>17 of the feed mill, the owners should be in cages</p> <p>18 like -- we should be in cages.</p> <p>19 And then they used a high powered</p> <p>20 rifle and shot out the electric transformers,</p> <p>21 bang, bang.</p> <p>22 Q. Let me take these one at a time.</p>
<p style="text-align: right;">722</p> <p>1 Q. Let me ask you. Let me -- you</p> <p>2 said that. You mentioned this truck being</p> <p>3 burned; right?</p> <p>4 A. Yeah.</p> <p>5 Q. When did that occur?</p> <p>6 A. At night.</p> <p>7 Q. What year?</p> <p>8 A. I don't recall the exact date.</p> <p>9 Q. Did you file a police report?</p> <p>10 A. Yeah.</p> <p>11 Q. And do you have records of that</p> <p>12 police report?</p> <p>13 A. I have no idea.</p> <p>14 Q. Was it written up in the paper?</p> <p>15 A. Of the person they went to their</p> <p>16 website, and they published what they did. And</p> <p>17 that person ended up pleading guilty later and</p> <p>18 serving -- he burnt down a laboratory in</p> <p>19 Michigan, and served multiple years in prison</p> <p>20 from my understanding.</p> <p>21 Q. Did that occur in 2002?</p> <p>22 A. He served prison after that.</p>	<p style="text-align: right;">724</p> <p>1 With respect to the spray paint on -- is it a</p> <p>2 water tower?</p> <p>3 A. Side of our feed mall.</p> <p>4 Q. Side of the feed mill. Where did</p> <p>5 that occur?</p> <p>6 A. Jen Acres.</p> <p>7 Q. And what year?</p> <p>8 A. Before we joined the UEP program.</p> <p>9 Q. Could it have been several years</p> <p>10 before, sir?</p> <p>11 MR. BARNES: Object to form.</p> <p>12 THE WITNESS: It may have been</p> <p>13 one day, it may have been 10 years. I don't</p> <p>14 recollect without seeing the document.</p> <p>15 BY MR. STUEVE:</p> <p>16 Q. Did you file a police report with</p> <p>17 respect to that?</p> <p>18 A. It was in the newspaper.</p> <p>19 Q. It was?</p> <p>20 A. Yeah.</p> <p>21 Q. And then you also mentioned that</p> <p>22 there were some shots fired?</p>

HIGHLY CONFIDENTIAL

Rust, Marcus - Vol. II

March 6, 2014

90 (Pages 725 to 728)

<p style="text-align: right;">725</p> <p>1 A. Yeah.</p> <p>2 Q. And where -- into what?</p> <p>3 A. Into the electric substation.</p> <p>4 Q. Okay. And when did that occur,</p> <p>5 sir?</p> <p>6 A. Prior to us joining UEP.</p> <p>7 Q. Would that have been several years</p> <p>8 before?</p> <p>9 A. It may have been one day, it may</p> <p>10 have been 10 years. I don't recollect. I would</p> <p>11 have to see records to see the date, I don't</p> <p>12 remember.</p> <p>13 Q. What records would you look to,</p> <p>14 sir?</p> <p>15 A. Quite frankly, that would probably</p> <p>16 be -- I'm not sure it would be in company</p> <p>17 records. It may be -- have to go -- it was in</p> <p>18 all the newspapers.</p> <p>19 Q. Okay. In what location?</p> <p>20 A. That occurred in North Vernon.</p> <p>21 Q. And, sir, any other events that</p> <p>22 you can recall?</p>	<p style="text-align: right;">727</p> <p>1 getting ready to attack one of our Iowa</p> <p>2 facilities.</p> <p>3 Q. Did it happen?</p> <p>4 A. No.</p> <p>5 Q. And was this written up in any</p> <p>6 newspaper?</p> <p>7 A. I doubt if it was. They notified</p> <p>8 us that through some kind of investigation they</p> <p>9 were doing, they found evidence that this was</p> <p>10 going to happen, and we put extra security, and</p> <p>11 notified the police department and, you know,</p> <p>12 animal terrorists, they burn stuff down in</p> <p>13 Michigan. You know, you never know what they're</p> <p>14 going to do.</p> <p>15 Q. Sir, with respect to the -- with</p> <p>16 respect to this last incident you're talking</p> <p>17 about, this threat that was stopped. Did you</p> <p>18 file any -- did you prepare any documentation of</p> <p>19 that?</p> <p>20 A. In the -- which one again?</p> <p>21 Q. The last one you're referring to?</p> <p>22 MR. BARNES: The FBI.</p>
<p style="text-align: right;">726</p> <p>1 A. Yeah. Our water plant was</p> <p>2 sabotaged in our Cort Acre operation.</p> <p>3 Q. And when did that occur?</p> <p>4 A. I don't recollect the date.</p> <p>5 Q. It could have been several years</p> <p>6 before 2002, sir?</p> <p>7 MR. BARNES: Object to form.</p> <p>8 THE WITNESS: It could have been.</p> <p>9 BY MR. STUEVE:</p> <p>10 Q. And was there a police report</p> <p>11 filed there?</p> <p>12 A. I believe there was.</p> <p>13 Q. Okay. Was it in the newspaper?</p> <p>14 A. I'm pretty sure it was.</p> <p>15 Q. All right. Do you remember what</p> <p>16 newspapers?</p> <p>17 A. I would assume the local.</p> <p>18 Q. Okay.</p> <p>19 A. Then we had another event. The</p> <p>20 FBI had notified us that one of our</p> <p>21 facilities was -- I don't know how they knew,</p> <p>22 but they had reason to believe a group was</p>	<p style="text-align: right;">728</p> <p>1 THE WITNESS: The FBI? We had</p> <p>2 several emergency phone calls and discussions</p> <p>3 about it trying -- I mean, when you've been</p> <p>4 notified by the FBI that some idiots, terrorist</p> <p>5 groups are going to come and burn one of your</p> <p>6 facilities down, you get concerned. When they</p> <p>7 burn the feed trucks, when they paint that the</p> <p>8 owner should be in jail, you know, I don't like</p> <p>9 that horse shit. You know, I --</p> <p>10 MR. BARNES: Just relax.</p> <p>11 THE WITNESS: I mean, to have our</p> <p>12 own customers suing us and everything over a</p> <p>13 program they asked us to be in, this is horse</p> <p>14 shit.</p> <p>15 MR. BARNES: Okay, just relax.</p> <p>16 Just relax. Are you almost finished or should</p> <p>17 we take a break? The witness -- it's late,</p> <p>18 we've been at this 10 hours, okay? He's</p> <p>19 obviously --</p> <p>20 MR. STUEVE: I'm almost done here.</p> <p>21 I would like to get an answer to my question, so</p> <p>22 I'm going to ask it one more time.</p>

HIGHLY CONFIDENTIAL

Rust, Marcus - Vol. II

March 6, 2014

91 (Pages 729 to 732)

<p style="text-align: right;">729</p> <p>1 BY MR. STUEVE:</p> <p>2 Q. Did you prepare any documentation</p> <p>3 with respect to your communications with the</p> <p>4 FBI, so we would be able to determine how far in</p> <p>5 the past that occurred?</p> <p>6 A. I'm sure someplace somewhere there</p> <p>7 may be a log or something. I don't have a clue.</p> <p>8 I don't remember. The FBI might have it.</p> <p>9 MR. MONICA: If you want it, we'll</p> <p>10 look for it.</p> <p>11 MR. STUEVE: Yeah. I do. With</p> <p>12 respect to all of this, that would be great if</p> <p>13 you've got it.</p> <p>14 BY MR. STUEVE:</p> <p>15 Q. Now, counsel also asked you</p> <p>16 questions about 562. Can you get that in front</p> <p>17 of you, sir?</p> <p>18 MR. BARNES: You already asked him</p> <p>19 about this, Pat.</p> <p>20 MR. STUEVE: No, I haven't. This</p> <p>21 is the other Brann & Isaacson.</p> <p>22 BY MR. STUEVE:</p>	<p style="text-align: right;">731</p> <p>1 BY MR. STUEVE:</p> <p>2 Q. Sir, in fact, his memo determined</p> <p>3 that your phase-in of the 100 percent rule for</p> <p>4 Michael Foods was in fact an anticompetitive</p> <p>5 restraint, sir; right?</p> <p>6 MR. BARNES: Object to the form of</p> <p>7 the question. Misstates the evidence.</p> <p>8 THE WITNESS: They had concerns</p> <p>9 about it. Our rule was not approved. What we</p> <p>10 suggested as a solution.</p> <p>11 BY MR. STUEVE:</p> <p>12 Q. And your solution was a phase-in</p> <p>13 of the 100 percent rule; right, for Michael</p> <p>14 Foods?</p> <p>15 A. Yes.</p> <p>16 Q. If the motion is adopted, the</p> <p>17 program would add restraints on external</p> <p>18 dealings that could expose the program to</p> <p>19 greater antitrust scrutiny. That's what he</p> <p>20 concluded; right?</p> <p>21 A. I think that's what it says.</p> <p>22 Q. He goes on to say, as</p>
<p style="text-align: right;">730</p> <p>1 Q. Sir, if you look at 562, your</p> <p>2 counsel asked questions about the Brann &</p> <p>3 Isaacson memo that is attached to 562. Do you</p> <p>4 recall that?</p> <p>5 A. I don't recall that.</p> <p>6 Q. Well, if you would, look over on</p> <p>7 674?</p> <p>8 A. 674. Okay.</p> <p>9 Q. Now, it says, as it's currently</p> <p>10 configured -- remember he read that language to</p> <p>11 you?</p> <p>12 A. Yeah, I remember that.</p> <p>13 Q. Now, there is no discussion either</p> <p>14 in that paragraph or any other paragraph in this</p> <p>15 memo about whether or not the 100 percent rule</p> <p>16 that was adopted by the UEP board is in fact an</p> <p>17 antitrust violation; correct, sir?</p> <p>18 MR. BARNES: Object to the form.</p> <p>19 THE WITNESS: It says here the UEP</p> <p>20 certified program serves a legitimate purpose of</p> <p>21 encouraging humane treatment of laying hens.</p> <p>22 That's why we were in the program, sir.</p>	<p style="text-align: right;">732</p> <p>1 participation in the program continues to grow,</p> <p>2 the imposition of restriction on the marketing</p> <p>3 of uncertified eggs creates ever increasing</p> <p>4 economic pressure for noncertified companies to</p> <p>5 become certified because it shrinks the market</p> <p>6 for uncertified product; did I read that</p> <p>7 correctly?</p> <p>8 MR. BARNES: Objection, asked and</p> <p>9 answered. You've read it twice now. The</p> <p>10 language hasn't changed, the document speaks for</p> <p>11 itself.</p> <p>12 BY MR. STUEVE:</p> <p>13 Q. It's the second item there?</p> <p>14 A. You read so fast, I couldn't hear</p> <p>15 everything you said. If you read what it says,</p> <p>16 that's what it is.</p> <p>17 Q. If you would, do you see where</p> <p>18 secondly is?</p> <p>19 A. I'm not even sure which page.</p> <p>20 Q. It's on 674?</p> <p>21 A. Okay.</p> <p>22 Q. It says, secondly, as</p>

HIGHLY CONFIDENTIAL

Rust, Marcus - Vol. II

March 6, 2014

92 (Pages 733 to 736)

<p style="text-align: right;">733</p> <p>1 participation in the program continues to grow, 2 the imposition of the restriction on the 3 marketing of uncertified eggs creates ever 4 increasing economic pressure for noncertified 5 companies to become certified because it shrinks 6 the market for uncertified product. Did I read 7 that correctly?</p> <p>8 MR. BARNES: Object to form. It's 9 about the fourth time you've read it. The 10 language hasn't changed, the document speaks for 11 itself.</p> <p>12 THE WITNESS: I can't find it. 13 BY MR. STUEVE:</p> <p>14 Q. At the bottom 674, and it says 15 secondly, it's four sentences up?</p> <p>16 A. I believe you read what it says. 17 Q. Now, and in fact, the -- as I 18 asked you earlier, the substantial portion of 19 the shell egg production is now certified 20 companies; correct, sir?</p> <p>21 MR. BARNES: Objection. Asked and 22 answered more than once.</p>	<p style="text-align: right;">735</p> <p>1 MR. STUEVE: It wasn't generated 2 by AWG. 3 MR. BARNES: You're telling me 4 this is not an AWG document. This spec is not 5 an AWG document? I think we should go to Judge 6 Duncan on this, and have Judge Duncan determine 7 --</p> <p>8 MR. STUEVE: Counsel, you weren't 9 at AWG's deposition. 10 MR. BARNES: No, I wasn't. All 11 I'm asking you is, is this an AWG document? Can 12 we have that stipulation or not? You can argue 13 --</p> <p>14 MR. STUEVE: I noted my 15 objections. You can ask the witness a question. 16 MR. BARNES: So you won't give me 17 a stipulation that this is an AWG document? 18 MR. STUEVE: You have the sworn 19 testimony of AWG -- 20 MR. BARNES: I'm asking you for a 21 stipulation this is an AWG document. 22 MR. STUEVE: It is not an AWG</p>
<p style="text-align: right;">734</p> <p>1 THE WITNESS: I believe it could 2 be. 3 MR. STUEVE: I have no further 4 questions. 5 EXAMINATION BY COUNSEL FOR ROSE ACRE FARMS 6 BY MR. BARNES:</p> <p>7 Q. Mr. Rust, I do have just very few 8 questions. 9 First of all, let's look at -- I 10 think it's 571. This is the AWG product spec 11 for fresh shell eggs, which requires all eggs 12 must be produced from hens certified to be 13 managed in compliance with the UEP animal 14 husbandry guidelines. Do you have that?</p> <p>15 MR. STUEVE: Objection, assumes 16 facts not in evidence. 17 THE WITNESS: Yeah. 18 MR. BARNES: Are you saying 19 they're a spurious document? Can we get a 20 stipulation, Mr. Stueve, that this is an 21 accurate spec that was generated by AWG? Can we 22 have that stipulation?</p>	<p style="text-align: right;">736</p> <p>1 document, it's produced by SF. 2 MR. BARNES: You've got the AWG 3 logo up in the left. And again, the evidence 4 will show that it is an AWG document. 5 BY MR. BARNES:</p> <p>6 Q. Mr. Rust, obviously I've struck a 7 bone here with this line of questioning. 8 MR. STUEVE: I object to the 9 characterization. I have no bone left right 10 now. 11 MR. BARNES: I've struck 12 something. 13 BY MR. BARNES:</p> <p>14 Q. Mr. Rust, before Rose Acre 15 responded to the AWG specification for fresh 16 shell eggs, which included the UEP certified 17 requirement before Rose Acre responded, did 18 anybody from AWG tell Rose Acre that the UEP 19 certified requirement was put in this document 20 by MOARK? 21 MR. STUEVE: I'm going to object. 22 It calls for speculation on the part of this</p>

HIGHLY CONFIDENTIAL

Rust, Marcus - Vol. II

March 6, 2014

93 (Pages 737 to 740)

<p style="text-align: right;">737</p> <p>1 witness.</p> <p>2 BY MR. BARNES:</p> <p>3 Q. You can answer.</p> <p>4 MR. STUEVE: He's said he has had</p> <p>5 no communications with AWG. Hold on, let me</p> <p>6 finish.</p> <p>7 It also assumes that in fact AWG</p> <p>8 provided these specifications to Rose Acre. And</p> <p>9 so bottom line, it assumes facts not in</p> <p>10 evidence, calls for speculation on the part of</p> <p>11 this witness.</p> <p>12 MR. BARNES: Anything else?</p> <p>13 MR. STUEVE: No.</p> <p>14 MR. BARNES: I just want to give</p> <p>15 you an opportunity to add more.</p> <p>16 MR. STUEVE: You keep misstating</p> <p>17 the record.</p> <p>18 MR. BARNES: Okay.</p> <p>19 BY MR. BARNES:</p> <p>20 Q. Mr. Rust, let me ask you again</p> <p>21 before we were so rudely interrupted. Did AWG</p> <p>22 ever tell Rose Acre that a requirement in their</p>	<p style="text-align: right;">739</p> <p>1 we've got more than enough of that in the record</p> <p>2 I'll just note there are one, two, three, four,</p> <p>3 five of these possible solutions?</p> <p>4 MR. STUEVE: Objection. First of</p> <p>5 all, objection to the form of the question. It</p> <p>6 is loaded with a speech from counsel.</p> <p>7 BY MR. BARNES:</p> <p>8 Q. There are five items under the</p> <p>9 possible solutions; are there not?</p> <p>10 A. Yeah.</p> <p>11 Q. Did you on behalf of Rose Acre</p> <p>12 ever vote to adopt any of those solutions?</p> <p>13 A. No.</p> <p>14 MR. BARNES: Thank you, Mr. Rust.</p> <p>15 MR. STUEVE: Hold on. I've got a</p> <p>16 follow-up question to your last question.</p> <p>17 MR. BARNES: I'm probably going to</p> <p>18 have another one.</p> <p>19 MR. STUEVE: That's all right.</p> <p>20 EXAMINATION BY COUNSEL FOR PLAINTIFFS</p> <p>21 BY MR. STUEVE:</p> <p>22 Q. Do you have 571 in front of you?</p>
<p style="text-align: right;">738</p> <p>1 spec for fresh shell eggs, okay, regarding the</p> <p>2 UEP certified animal husbandry guidelines was</p> <p>3 placed in their specs by MOARK?</p> <p>4 MR. STUEVE: Objection, calls --</p> <p>5 hold on -- objection, calls for speculation on</p> <p>6 the part of this witness. He has already</p> <p>7 testified he had no communication with AWG.</p> <p>8 BY MR. BARNES:</p> <p>9 Q. Can you answer the question?</p> <p>10 A. Not that I'm aware of.</p> <p>11 Q. Okay. Let me direct your</p> <p>12 attention, Mr. Rust, back to Exhibit 117. This</p> <p>13 is the egg industry economic alert.</p> <p>14 Do you have that in front of you?</p> <p>15 A. Yep.</p> <p>16 Q. Mr. Stueve, for at least the</p> <p>17 second time took you through the possible</p> <p>18 solutions that are listed in this document?</p> <p>19 A. Yes.</p> <p>20 Q. Do you see that, possible</p> <p>21 solutions. And I'm not going to read everyone</p> <p>22 of them, he's read them a number of times, so</p>	<p style="text-align: right;">740</p> <p>1 MR. BARNES: Oh, the AWG spec.</p> <p>2 BY MR. STUEVE:</p> <p>3 Q. Do you have Exhibit 571 in front</p> <p>4 of you?</p> <p>5 A. Yeah.</p> <p>6 Q. I want to make sure the record is</p> <p>7 clear, you had no direct communication with AWG</p> <p>8 concerning Rose Acre's bid for AWG's business in</p> <p>9 2013; is that correct, sir?</p> <p>10 A. I have never spoken to anyone who</p> <p>11 works for AWG.</p> <p>12 MR. STUEVE: I have no further</p> <p>13 questions.</p> <p>14 MR. BARNES: Mr. Rust, thank you</p> <p>15 for your patience. You've been here -- it is</p> <p>16 now I guess 10 hours or so we've been at this,</p> <p>17 and the cleaning crew is ready to come in.</p> <p>18 MR. MONICA: Two things. Is there</p> <p>19 anyone on the phone that has questions for</p> <p>20 Mr. Rust?</p> <p>21 MS. REDDING: This is Whitney</p> <p>22 Redding for Pepper Hamilton. No questions here.</p>

HIGHLY CONFIDENTIAL

Rust, Marcus - Vol. II

March 6, 2014

94 (Pages 741 to 744)

<p style="text-align: right;">741</p> <p>1 MR. MONICA: Sounds like we're</p> <p>2 good on the phone then.</p> <p>3 MR. BARNES: Okay. John, why</p> <p>4 don't you do this.</p> <p>5 MR. MONICA: Earlier in the</p> <p>6 deposition, we had talked about getting Mr. Rust</p> <p>7 to sign Exhibit A to the protective order in the</p> <p>8 case which is an acknowledgment and consent that</p> <p>9 he will keep the materials that have been</p> <p>10 designated as highly confidential confidential</p> <p>11 in this case and won't disclose them. He has</p> <p>12 since executed that exhibit. I want you all to</p> <p>13 look at it and make sure, and we're going to</p> <p>14 mark this exhibit which includes it.</p> <p>15 MR. STUEVE: Sorry, I was</p> <p>16 distracted. Looks like the acknowledgement and</p> <p>17 consent and it's been executed by Marcus Rust.</p> <p>18 I think this is consistent with what Jan Levine</p> <p>19 for UEP USEM had asked.</p> <p>20 MR. MONICA: We'll just mark that</p> <p>21 as 572.</p> <p>22 (Rust Exhibit Number 572 was</p>	<p style="text-align: right;">743</p> <p>1 ACKNOWLEDGMENT OF DEPONENT</p> <p>2</p> <p>3 I do hereby acknowledge that I have read</p> <p>4 and examined the foregoing of the transcript of</p> <p>5 my deposition and that:</p> <p>6</p> <p>7 (Check appropriate box):</p> <p>8</p> <p>9 () the same is a true, correct and</p> <p>10 complete transcription of the answers given by</p> <p>11 me to the questions therein recorded.</p> <p>12</p> <p>13 () except for the changes noted in the</p> <p>14 attached errata sheet, the same is a true,</p> <p>15 correct and complete transcription of the</p> <p>16 answers given by me to the questions therein</p> <p>17 recorded.</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p style="text-align: center;">_____ DATE SIGNATURE</p>
<p style="text-align: right;">742</p> <p>1 marked for identification.)</p> <p>2 MR. STUEVE: Great. Thanks for</p> <p>3 your time.</p> <p>4 THE VIDEOGRAPHER: This is the end</p> <p>5 of the videotaped deposition. Off the record at</p> <p>6 7:00 p.m.</p> <p>7 (Signature not waived.)</p> <p>8 (Whereupon, at 7:00 p.m., the</p> <p>9 deposition was concluded.)</p> <p>10 - - - - -</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p>	<p style="text-align: right;">744</p> <p>1 CERTIFICATE OF NOTARY PUBLIC</p> <p>2 I, Paula G. Satkin, the officer before whom the</p> <p>3 foregoing proceedings were taken, do hereby</p> <p>4 certify that the witness whose testimony appears</p> <p>5 in the foregoing proceeding was duly sworn by</p> <p>6 me; that the testimony of said witness was taken</p> <p>7 by me in stenotype and thereafter reduced to</p> <p>8 typewriting under my direction; that said</p> <p>9 proceedings is a true record of the testimony</p> <p>10 given by said witness; that I am neither counsel</p> <p>11 for, related to, nor employed by any of the</p> <p>12 parties to the action in which these proceedings</p> <p>13 were taken; and, further, that I am not a</p> <p>14 relative or employee of any attorney or counsel</p> <p>15 employed by the parties hereto, nor financially</p> <p>16 or otherwise interested in the outcome of the</p> <p>17 action.</p> <p>18 My commission expires November 14, 2015.</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p style="text-align: center;">_____ PAULA G. SATKIN Notary Public in and for the District of Columbia</p>

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HIGHLY CONFIDENTIAL

Rust, Marcus - Vol. II

March 6, 2014

1

A	743:3	614:8 615:4,10	666:12,16	611:12 631:14
A-C-R-E-S	acknowledge...	618:11 619:12	action 380:11	admit 455:2
646:10	741:16	619:16,18	468:18 469:3	adopt 739:12
a.m 372:17	acknowledging	620:7 621:1	469:10,20	adopted 446:14
378:6 448:20	459:18	630:7 633:11	470:18 471:4	493:9,11
449:2 493:22	acknowledgm...	636:13 637:11	478:22 710:8	495:13 500:16
494:3	741:8 743:1	637:22 639:7	744:12,17	578:9,12
AAA 479:18,22	acquired 653:3	643:11 644:17	actions 721:6,9	730:16 731:16
ability 479:7	655:5,6,8	647:16 648:1,8	activists 513:15	adoption 628:11
588:8 589:6	Acre 373:11	648:15,21	626:2 674:21	adulterated
607:5	375:3 378:17	649:6,12 651:5	721:19	540:21 541:2
able 490:18	378:21 379:19	651:16 652:13	activities 562:4	advance 575:3
499:21 515:13	380:4,18	653:11,20	562:11 666:4	advice 663:9
661:19 729:4	389:18 391:21	654:6,13	714:13,15	664:8,12 665:3
absolute 718:7	399:11 403:2,5	660:20,22	715:21 716:8	666:8 713:22
absolutes	407:2 411:20	661:9 667:14	718:1 721:18	714:5 715:16
566:11,18	415:10 421:21	668:15,17	activity 615:22	advised 596:4
568:3 718:5,18	425:4,14	669:2 672:15	acts 673:3	717:14,18
ACC 463:7,14	426:17,20	674:18 677:11	actual 450:20	advisor 621:19
503:18 504:17	427:11 430:19	677:19 700:14	484:6 507:7	Advisory 631:16
505:1 683:4	431:22 432:2	702:16 706:20	510:4,5 552:4	affiliated 556:5
684:7	433:11,18	707:21 721:10	596:10 650:7	affiliation
accept 591:7	434:4,12 435:1	726:2 734:5	692:10 701:10	627:13
632:15	438:12 449:4	736:14,17,18	add 578:13	afraid 400:16
access 538:4	454:20 459:18	737:8,22	731:17 737:15	612:11
accommodate	460:11 461:7	739:11	added 429:14	afternoon 511:1
436:1	466:22 467:8	Acre's 387:18	536:18 620:5	673:19,20
accomplished	467:20,21	388:15 391:7	652:19 653:1	agenda 394:2
382:7 628:14	468:2,13 477:1	430:16 486:3	adding 509:10	439:10,13
account 612:16	478:8,14	523:20 575:7	655:22	442:9 443:4,10
613:1 638:12	480:21 481:10	578:10 636:20	addition 579:4	agent 639:15
accountants	486:15 492:9	637:1 661:3	638:15	ago 545:6
659:3	499:15 513:22	740:8	address 420:6	655:10,10
accurate 513:15	517:16 521:16	Acres 646:3,6	439:21	Agra 519:19
620:1 734:21	522:3 523:1,19	646:19 647:7	addressed 580:4	agree 395:9
accurately	525:22 526:6	647:11 724:6	633:10 679:2	396:3,13,17,18
401:11	532:14 533:9	Act 382:9,10	adjacent 671:19	397:4,7,13,15
accused 537:11	538:9 541:15	384:14 548:19	adjust 476:7	398:5,11,14
accusing 635:15	544:4 553:13	557:1 572:12	adjusting 476:5	404:11 405:14
achieve 436:22	556:21 571:19	663:4,5,16,21	adjustment	406:5 480:2
632:17	574:7,21	664:4,14 665:2	576:14,20	599:13 676:1
acknowledge	575:13 583:10	665:8,17	administrator	agreed 426:14

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HIGHLY CONFIDENTIAL

Rust, Marcus - Vol. II

March 6, 2014

2

449:11 498:8 628:15 agreement 380:20,21 496:8,18 513:10 566:4,8 608:14 609:2 642:21 660:16 agreements 564:13,21 566:2 567:10 637:15,18 agricultural 686:22 689:4 agriculture 570:2 686:18 688:22 Agro 642:11 ahead 391:12 397:12 444:11 464:8 485:14 511:20 514:3 544:16 553:15 555:8 586:9 606:15 627:3 643:15 652:7 664:21 695:11 702:6 703:10 704:4,19 706:5 709:13 717:4 air 428:19 431:1 431:6 al 372:6,9 435:7 626:20 686:11 688:3 alert 690:21 691:12,13,22 692:5,10 710:2 710:14,17 711:5 738:13 Alexander 565:9,20	alleged 721:9 allocate 478:5 allow 409:15 574:5 604:14 686:21 704:6 allowance 403:13 allowed 475:1,4 500:18 552:6 558:14 574:15 589:20 594:9 602:12 allowing 610:2 611:4 allows 556:8 618:18 alongside 602:7 alternative 589:7,18 590:9 591:7 592:5 609:19 amendment 551:1 615:21 ammonia 430:22 433:14 433:19 434:5 434:10,14 444:20 466:8 468:3,18 469:3 469:7,10,16,21 470:4,14 471:4 477:10,14 478:1,22 526:7 amount 516:15 538:12 539:1 amounted 619:19 amounts 549:9 analysis 577:22 and/or 611:15 711:20 angle 511:19	animal 380:10 394:2,5,17,22 399:21 403:13 405:9 410:13 411:21 420:21 425:6,10 432:9 435:13,21 436:5,11 438:18 439:13 439:17 440:3,8 440:9 442:9 443:10 444:16 446:3,8 450:15 459:13 460:12 460:19 463:11 478:2 487:19 488:14 492:15 502:8,9 513:14 513:19 574:20 583:20 584:12 586:5 588:10 589:7,10 590:1 590:2,9 591:7 592:5 601:11 601:16 603:17 603:21 604:2,7 604:11 605:7 606:6 608:3,16 609:3,19 610:4 610:5,18,19 626:2 628:2 629:22 630:8 630:11 632:11 632:16,18,22 672:14 674:14 674:16,17,21 675:1 679:3 693:19 697:18 721:18 727:12 734:13 738:2 animals 604:8 605:13 607:5,6	announced 503:18 683:3 684:7 announcement 719:13 annual 657:10 anomia 428:19 431:6 answer 380:2,15 388:1 391:3,12 396:15 397:11 397:12 416:10 416:14,16,19 417:20 418:2,6 419:7,9,15 421:3 423:1,3 423:9 425:19 425:20 426:10 429:4,19,21 434:12 437:16 441:21 444:6,7 444:11 454:4 470:8 475:12 483:8,15 484:12 485:9 485:15 494:21 496:3 497:3 508:11 516:6 517:14 518:16 537:21 543:2 563:14 574:13 576:18 589:14 591:11 598:10 606:14,16 620:13 627:3 643:14 644:7 652:6 702:6 703:10,16,18 705:7 706:4 717:4 720:2,21 728:21 737:3 738:9	answered 391:10 419:13 419:14 426:2 483:12 514:19 516:13 644:1,4 650:14 652:3 716:21 717:3 718:14 719:18 732:9 733:22 answering 475:13 611:17 answers 743:10 743:16 Anthony 407:16 407:17 414:22 415:9,14 417:12 422:2 424:11,19 Anthony's 412:13 anti 463:20 anticipating 535:2 anticompetitive 579:5 606:21 607:2 731:4 antitrust 561:13 569:17 575:4 578:15 579:7 664:13 666:4 686:18 730:17 731:19 anybody 552:7 602:21 603:11 616:4 681:12 682:6,7 736:18 anyway 435:13 apologize 643:22 appear 514:17 515:3 518:10 appearance
--	--	---	---	--

Henderson Legal Services, Inc.

202-220-4158

www.hendersonlegalservices.com

HIGHLY CONFIDENTIAL

Rust, Marcus - Vol. II

March 6, 2014

3

378:11	443:7 646:18	454:3 470:17	720:16 735:11	685:6
APPEARAN...	647:21,22	512:17 514:19	735:20	attack 727:1
373:1	648:5,12,18,20	520:7,8 571:4	assessment	attacks 672:14
appeared 515:2	649:4,5,9,11	573:8 575:2	622:8	attempt 439:20
515:5 519:19	650:1 651:13	591:13 601:18	assistant 399:18	551:1 561:2
523:15	653:8,15 654:2	614:18 615:1,9	407:14	567:14,19
appears 466:1,4	654:10,17,20	617:6 625:22	associate 378:13	570:17 664:6
493:4 569:7	655:7	630:13 636:19	associated 372:5	718:8
598:21 615:20	April 521:19	636:19 637:1,5	593:1 706:14	attempting
618:12 670:1	Arch 374:10	650:12,13,16	707:6,11	590:8 613:1
685:3 686:10	area 439:9	650:17 652:2,3	association	attend 571:4,12
689:16 744:4	466:9 468:4	671:2 673:14	386:10 390:13	attended 462:9
applicable	477:10 535:13	675:12 683:22	627:11	462:18 570:19
521:4	564:20 661:18	684:2,5 694:4	assume 405:7	attention 392:10
application	areas 667:22	699:19,22	410:4 532:6	414:16 417:12
386:10 572:12	argue 579:6	700:14 704:12	554:14 562:20	463:3 497:4
applied 382:10	682:3 735:12	705:7,19 713:9	564:18 572:18	526:17 529:14
383:21 459:11	arguing 465:1	716:20 717:3	580:16 612:21	530:3 539:17
608:7	argument	718:14 719:18	617:19 642:14	601:14 634:10
applies 712:4	451:21	721:4 728:13	700:22 701:5	635:15 669:17
apply 386:17	Armstrong	729:15,18	703:2 706:10	670:15 671:7
387:12 466:14	432:6	730:2 732:8	726:17	674:14 675:3
493:15 610:5	Arthur 373:14	733:18,21	assumes 523:4	678:11,19
610:19	378:16	741:19	734:15 737:7,9	679:7 680:2,8
appreciated	article 377:2	asking 398:4	Assuming	684:2 685:19
667:4	441:16 442:4	415:21 416:11	704:10	686:1,15 687:6
apprehensive	443:9 519:19	416:14 419:16	assumption	687:20 688:8
382:16,18	519:21 520:14	421:8,16	701:4	691:4,7 696:17
551:2	521:10,22	447:22 462:16	assurance	713:17 738:12
appropriate	523:15	469:18 475:21	631:21 706:15	attorney 555:18
743:7	artificial 506:15	476:4,7 478:14	707:1,7,12	571:3 680:1
approve 692:15	506:19 507:10	503:3 509:13	ATC 441:19	744:14
approved	507:16 510:10	515:16 516:7,9	attach 618:12	attorney-client
451:10 525:12	artificially	525:7 527:18	attached 569:2	561:11 681:16
539:8 576:7	506:14 508:5	563:8 564:3,4	575:6 581:8	attorneys 378:7
593:1,2,4	508:22 509:5	572:7 601:15	599:4 616:6,12	666:3
594:21 688:22	509:20	611:7 664:18	617:13 622:7	attributed
710:9 731:9	asked 385:17,21	665:1 681:16	663:11 730:3	404:16,22
approximate	386:2 390:16	698:6,14	743:14	719:11
646:15 647:10	391:9 416:17	709:16 717:11	attachment	audit 410:14,16
approximately	419:13 426:1	717:16 719:20	686:2 688:5	415:2 417:15
378:6 408:2	429:21 430:12	719:22 720:8	attachments	418:17 422:5,6

Henderson Legal Services, Inc.

202-220-4158

www.hendersonlegalservices.com

HIGHLY CONFIDENTIAL

Rust, Marcus - Vol. II

March 6, 2014

4

427:1 433:22	543:15 622:10	738:7 740:1,7	603:14 608:13	banning 457:4
444:20,22	Avenue 374:18	740:11	609:1 613:17	Barnes 373:13
445:15 465:21	average 393:9	AWG's 707:20	615:3 620:12	376:3,5 378:15
466:13,18,19	395:14 422:15	735:9 740:8	636:3,7 645:22	378:15,19
466:19 467:19	422:16,18		646:22 652:19	380:7 386:3
470:1,21	474:21 475:20	B	667:12 669:17	391:9 392:1
472:19 473:4	averaged 422:17	B 376:8	694:10,14,20	395:19 397:5,9
480:21 486:2	averaging	B-A-U-E-R	702:9 703:17	397:18 398:10
486:15,18	474:22 475:4	689:2	705:12,12	398:20 401:14
491:14 587:4	475:19 476:8	back 384:2	706:11 709:15	402:4 404:2,9
590:17,21	AWAP 630:1,4	386:20 388:1	717:7 720:2,20	406:3 412:6,20
592:13,19	631:20 632:4,6	393:8 395:13	738:12	413:20 415:17
593:1,2,3	632:10,16	395:15,18,22	backfill 435:22	416:1 418:5
594:5,19	633:1	396:8,21 397:2	454:21 455:9	419:12 423:6
628:17 630:1,8	aware 388:20	397:8,16 398:7	backfillers	424:5 426:1,13
630:11 632:10	409:19,21	404:6 410:5	455:1,11	427:16,20
632:12,16,17	446:7,11	413:15 416:18	backfilling	429:22 430:3,8
632:22 633:2	450:22 451:8	418:1 419:8	435:5 436:5,10	431:19 432:15
audited 415:1	459:15 499:22	421:3 422:8	436:20 439:17	432:20 436:8
423:16	500:4 522:2,10	423:2 425:20	440:2,20,20	437:12 440:14
auditing 632:1	523:19 533:11	426:9 430:3,5	441:17 442:5	441:1,9 443:21
auditor 418:15	533:16 549:11	437:6,16,20	442:15 443:9	444:10 445:3
482:16	561:20 580:13	440:16 444:6	443:11 450:14	445:11 447:3
auditors 420:5	587:18 601:6	449:1 452:11	450:19,22	448:9,13,18
audits 443:14	602:15 610:1	457:11 461:12	451:2,4,6,11	453:8,21
444:14,15	610:16 619:1	464:9 470:6	451:22 452:3	456:22 459:5
445:5,9,18	623:3 629:12	479:15 483:14	453:6,10,19	460:17 461:9
631:20	665:17 701:14	494:2,16 495:4	454:15,20	461:16,22
August 434:20	702:15,20	495:20 497:13	455:3,13 456:1	462:2,4,10,15
441:7,13 442:3	738:10	498:13 501:18	456:17 457:4	462:19 464:4
442:16 466:3	AWG 693:17	505:7,8 511:4	461:2,6 596:2	464:12 465:13
470:2,20	696:22 699:10	511:6 512:9,13	596:4 597:2,5	467:3 468:6
611:13 613:20	699:16 700:4,7	516:17 519:1	backs 626:2	470:11 472:13
614:3 616:10	700:15 701:14	519:12 524:17	badly 431:10	472:20 473:10
618:9 620:8	702:18 703:5	529:1 532:12	Baker 611:11	474:1,9 475:9
authenticated	704:12 705:19	534:20 535:10	677:16	476:3 480:14
513:20	705:21 734:10	536:5 544:10	ban 454:15,20	480:18 482:3
authenticity	734:21 735:2,4	545:7,9 559:11	456:1 461:6	482:11 483:2
520:18	735:5,11,17,19	563:14 568:10	bang 723:21,21	483:10,18
automatically	735:21,22	581:6 582:17	bankrupt	484:13,20
410:19	736:2,4,15,18	587:11 589:14	539:11	485:10 487:3
available 479:5	737:5,7,21	591:15 599:21	banned 451:2	487:13 493:20

Henderson Legal Services, Inc.

202-220-4158

www.hendersonlegalservices.com

HIGHLY CONFIDENTIAL

Rust, Marcus - Vol. II

March 6, 2014

5

495:17 502:20	625:17 627:2	707:13 708:9	465:18 473:7	690:16 713:21
505:5,18 507:2	633:5 634:4,17	708:18 709:5,8	476:13 518:4	726:12,22
509:9,22	635:1,18	709:12 710:5	520:1,2 529:13	733:16 734:1
510:14 511:15	640:12 643:12	710:20 711:8	568:12 575:10	believed 425:14
511:20 512:4	643:18,22	711:15 712:14	621:2 626:7	432:13 461:6
512:13,18	644:2,6 645:3	713:11 714:10	629:7 688:10	504:3 508:20
513:2,8 514:18	645:7 646:21	714:21 715:4,8	battle 416:12	509:17 510:9
517:12 518:8	650:13 652:2,7	716:3,12,20	Bauer 689:2	588:2,19 589:3
518:13,17,20	658:6 662:12	717:10 718:13	bearing 429:1	606:19 607:2,3
519:5,15	664:15,20	718:21 719:17	669:21	617:7,9 634:11
520:17,21	666:21 667:3	720:6,15	bears 448:14	720:10
522:6,14 523:3	667:15 668:22	721:15 724:11	682:12 690:18	belongs 435:16
524:1,9 526:20	669:12,19	726:7 727:22	becoming 490:5	bent 511:9
529:6 531:18	670:6,9,12,14	728:10,15	beginning	Berland 679:14
532:4 535:6	671:1 672:19	729:18 730:18	403:14 405:9	best 404:18
543:18 544:16	673:12,14,18	731:6 732:8	449:1 456:5	405:17 415:2
544:19 545:2,8	673:22 674:2	733:8,21 734:6	458:21 460:2	424:9,15 450:1
545:10,20	675:12,14	734:18 735:3	569:5 582:17	572:20 641:15
549:7 550:2,7	676:21 677:1,5	735:10,16,20	667:12 674:10	650:4 657:15
550:12,16	677:7 678:14	736:2,5,11,13	686:3 688:16	658:7 674:12
551:16 552:13	678:16 679:21	737:2,12,14,18	begins 378:2	700:20
553:2,5,14	681:1,3,19	737:19 738:8	671:11 673:9	better 550:2
554:6,19 555:1	682:2,4,19	739:7,14,17	behalf 373:3,11	603:10 674:9
555:5,8 557:18	683:2,6,8,12	740:1,14 741:3	374:3,14	beyond 431:11
558:6,11,20	683:17,19,20	Barry 583:3,21	378:12 523:18	556:12,17
559:7 563:5	684:13 685:2	584:13	621:7 636:12	566:11 647:4
565:12 568:13	685:14,18,21	based 530:11	739:11	693:12,14,15
568:19 573:13	688:2,6,11,13	610:5,19 628:5	belief 719:12	694:6 695:1,4
577:15 586:8	689:21 690:1,5	635:12 643:2	believe 378:9	695:8,11
588:5,22	690:7,11,12,22	659:21,22	379:18 380:9	bid 699:20
590:11 591:9	692:19,22	691:21	382:21 387:3	700:15,19,20
591:11,18	693:5,13 694:1	basic 563:10	389:19 390:8	702:16 707:20
592:7 593:6	694:8,13,18	basically 659:20	425:11 430:1	708:6 740:8
594:1,13 595:2	695:14 696:2,8	basis 381:10	447:20,21	bidding 695:10
597:10 606:10	696:14,16	468:11 497:10	451:19 491:3	699:14,15
606:13,22	697:20 698:10	520:18 522:22	511:12 544:15	700:8 708:8
608:11,17	698:16 699:10	658:15 659:2	570:16 602:1	bids 604:20
609:4 610:11	700:16 701:18	659:11 686:17	607:2 614:15	708:5
611:6 615:14	702:12 703:8	Bates 392:7	625:20 644:14	big 428:17
615:19 618:1	703:19 704:4	403:3 406:10	644:22 645:7	430:20 539:14
619:3 622:17	704:16,22	414:11 428:2	655:15 657:14	542:6 645:17
624:17 625:9	705:10 706:2	438:8 449:10	658:6 672:8,22	bigger 534:2

Henderson Legal Services, Inc.

202-220-4158

www.hendersonlegalservices.com

HIGHLY CONFIDENTIAL

Rust, Marcus - Vol. II

March 6, 2014

6

603:11	635:5,9,13	boycott 562:15	brief 448:21	655:4 661:16
bill 659:5	730:16	562:18 563:9	494:1 559:10	bulk 551:12
bird 408:21	Board's 634:10	563:21 567:19	582:15 636:2	641:9
416:8 428:11	635:15	714:19 716:1	667:10	bullet 445:17
429:15 528:20	Bob 589:3	716:10,14	bring 634:9,15	447:2 449:22
540:14 650:7	body 414:21	718:8	634:21 635:14	450:2 461:1
birds 407:17	415:15 416:9	boycotting	bringing 601:14	562:3,10,14
408:2,8,11,12	417:7,17	564:5	693:1	565:6 567:18
408:13,22	419:20 424:3	Brad 503:13,13	broad 645:17	568:22
409:1,6,13,19	425:8 426:21	503:17 682:14	680:21	bunch 572:14
411:1,4 412:9	458:14 459:3	682:21 684:6	brochure	burn 421:1
412:10,14	460:20	brain 547:10,20	384:11 646:2	727:12 728:5,7
413:11 414:3	bona 570:2	brand 621:12	brochures 425:4	burned 673:1
417:5 418:20	686:22	704:8	broiler 428:21	674:12 721:13
422:20 428:12	bone 736:7,9	brands 621:11	429:1 431:17	722:3
428:19 430:22	boost 394:1	621:11 622:7	432:1,2	burnt 722:18
431:14 489:1	395:5,17	Brann 561:10	broilers 428:22	723:1,12
493:13 549:13	396:12 397:2	577:22 578:4	429:9	business 431:22
549:14 551:6	406:1 464:3	581:20 663:9	broke 654:13	490:1 539:10
551:14,22	465:4 502:18	663:20 679:8,9	broker 621:16	549:19 551:3
574:12 619:19	504:7	679:12 680:11	Brook 647:17	551:13 552:3
619:20 620:5	boosting 403:22	682:7 687:20	brother 393:19	567:19 590:1
652:19 659:2	bottom 402:19	688:15 714:1	394:3 407:16	597:14 603:12
659:11,16,17	403:10 405:1	715:15 729:21	412:13 413:6	605:20,21,22
659:18,19	410:3 414:17	730:2	415:9 422:2	624:15 638:1
bit 439:7 458:11	428:3,7 441:11	break 448:8	424:21 426:3,5	638:20 699:16
479:21	475:20 499:3,6	449:4 493:19	455:18,18	707:20 718:9
black 539:7	506:7 525:3	524:12 559:14	brother-in-law	740:8
540:4	526:19 527:3	582:11 635:21	399:14 426:6	business's 607:4
blank 595:15	527:16 545:7	698:7,13,16,17	brought 417:12	buy 504:11
bleeding 409:13	547:8 586:22	728:17	539:17	508:14 530:9
409:20	599:22 612:11	breakers 567:10	brown 408:11	530:18 552:9
blood 412:9	621:4 628:10	713:4	408:13 583:3	668:12,13,21
board 390:15	657:20 670:10	breaking 455:21	Bryant 634:10	buyer 623:17
446:14 450:18	687:10 688:14	510:13 540:19	budgets 534:21	624:5
451:10 454:14	688:17 733:14	541:5,7 602:20	535:4,12	buying 640:22
455:3 457:3	737:9	breast 408:7	bug 596:2	641:1
487:17,18	bought 498:5	409:14,20	build 652:21	buys 668:18
551:1 570:12	642:17	410:3	built 646:6,19	bylaws 686:20
623:9 626:22	bounce 547:10	breed 408:21	647:7,16 648:1	
627:22 634:1	547:20	431:12	648:8,15,21	
634:16,22	box 743:7	breeds 408:22	649:6 652:13	

C

C 373:12 374:1

HIGHLY CONFIDENTIAL

Rust, Marcus - Vol. II

March 6, 2014

7

378:1	642:11 677:2	450:15 463:11	CEP 573:9	501:4,12
cage 393:13	677:16	583:20 584:12	certain 422:10	502:16 503:19
410:18,18,20	calling 418:7	586:5 588:10	478:5,19,19,20	505:15 525:9
411:1,3,7	618:2	589:18 628:2	526:3 557:4	526:6 541:9
419:1,3,4	calls 397:9	632:11,16,18	589:19 671:3	542:16 543:2
422:12 424:13	412:7 464:4	632:22	672:14	560:16,19
436:21 440:21	664:16 669:8	cared 589:19	certainly 395:12	567:1 570:12
443:18 451:15	705:1 728:2	605:19	435:15 452:17	570:14,17
452:4 453:11	736:22 737:10	carefully 686:21	454:5 460:15	572:13 573:2
454:16 456:13	738:4,5	Cargill 551:3,10	483:21 634:14	574:7,15 575:1
456:13,15	Capacity 650:6	Carlson 521:19	637:8 645:9	576:6,7,11
463:12 464:1	654:19	Carolina 654:15	657:2 696:14	577:4 578:22
465:2 466:9,17	Capper-Volst...	661:17	CERTIFICA...	583:20,22
468:4 473:22	381:5,13 382:9	carried 691:16	744:1	584:12,14,21
474:6,14,20	382:10,19,22	709:22 711:4	certification	585:2,6 586:5
475:7,17 476:1	383:20 384:14	case 372:7	450:15 541:9	587:19 588:2
477:10 502:12	386:10,17	447:10 504:5	548:8 579:10	594:10,22
502:17 504:5	387:11 548:8	514:2 518:10	693:20	601:7 602:7
505:2,16 527:6	548:19 556:8	520:11 565:7	certified 379:17	603:3,7 604:1
528:1,9,18	557:1 561:6	565:17 636:9	379:19 380:5	604:12 606:9
530:8 567:3	572:12 663:4	666:2,11 689:2	387:18 388:7	612:13,17
589:11 619:19	663:16,21	704:11 741:8	388:15 389:1,5	613:2 622:8
675:8,17 676:2	664:4,14 665:2	741:11	389:10,18	623:1 625:14
719:15 720:13	666:8,12,16	catch 462:12	390:7,16 391:7	630:17 631:4
cages 439:17	684:21 685:5,6	670:19	394:8 400:20	632:12,16,18
440:3 450:14	685:7 686:11	category 469:12	403:14 405:6,9	632:22 664:5
475:1,2,3,5,6	688:4,18	566:6 621:18	410:14 416:6	668:13,16
475:16,22	caps 706:18	716:17	417:4 420:4	669:6 680:14
481:14 515:13	captioned 680:6	cause 491:17	432:10 433:8	680:18 697:17
723:17,18	690:20	503:21 505:17	435:13,22	701:2 702:21
calculator	car 642:20	684:8	436:6 439:17	703:7 704:15
474:16 476:17	cardiocoseriod	causes 487:20	443:19 446:4	706:1,8 708:15
call 465:14	431:8	caution 681:17	451:1,9 463:8	719:14 720:12
479:18 508:15	care 403:13	681:20	463:11 467:13	730:20 732:5
537:8 583:14	405:9 409:15	CCF 621:11,11	467:16 478:13	733:5,19
583:17 584:9	410:13 411:21	622:7	487:20 488:18	734:12 736:16
606:1 621:18	412:14 413:4	ceiling 411:14	489:9,13,17	736:19 738:2
641:14 677:2	413:11,18	cell 479:9,10	490:2,5,17	certify 385:1
677:22 689:18	414:3 420:19	Center 648:22	492:18 495:14	744:4
called 379:2	425:13 435:21	648:22 649:3	496:9,19 498:3	cetera 628:18
413:13 456:11	436:6 439:17	cents 540:7,12	498:8 499:11	Chad 598:13,16
540:16 597:18	440:3,9 446:4	541:3	499:22 500:19	598:20 599:1,1

Henderson Legal Services, Inc.

202-220-4158

www.hendersonlegalservices.com

HIGHLY CONFIDENTIAL

Rust, Marcus - Vol. II

March 6, 2014

8

600:21 601:13 603:13 chain 539:13,14 598:8 626:15 627:8 630:2 704:6 Chairman 677:16 challenge 556:10 chance 426:10 470:7 526:21 595:13 612:12 628:22 676:11 change 463:13 497:11 706:21 707:9 changed 436:15 436:17,20 641:14 642:13 732:10 733:10 changes 743:13 changing 531:1 channel 514:22 515:3 characterizati... 396:4,17 736:9 characterizing 702:2 charge 407:9,13 638:12 cheaper 530:9 530:18 check 555:3,5 743:7 checking 412:3 checklist 466:18 Chicago 374:19 539:11 600:8 chicken 416:13 418:16,17,18 420:16,16	422:9,9,14 424:12,13 431:18 434:9 456:12,14 478:17 482:1 483:1,6 484:8 484:19 485:2 536:8 542:13 542:17,19 605:5 705:15 712:20 chickens 385:1 385:2,5 409:15 411:13,16 418:8,9,10,22 418:22 419:3,4 419:5 420:22 422:10,11,12 428:22 429:10 429:11 431:12 432:1,2 434:8 456:14 482:14 488:13,14 502:8 576:17 577:1 588:8,11 588:13,15 589:21 590:3 602:12 604:5,5 604:6 605:17 605:18 606:4 657:21 658:1 choice 700:20 chosen 609:13 chronology 442:14 chuckle 544:2 circle 471:9 651:17 Circuit 565:9,14 565:14 cited 429:11 City 373:8	claims 623:2 clarify 629:21 clean 519:13 667:21,22 697:22 cleaning 740:17 clear 472:17 565:7,17 646:8 695:15 709:20 714:18 715:22 740:7 clearest 579:7 clearly 569:19 693:17 client 513:22 521:7 607:21 693:17 client's 702:3 clip 521:15 close 551:22 648:7 654:4 closed 652:10 closeout 545:5 closer 683:16 club 384:5 clue 729:7 co-op 381:5,13 382:20,22 560:9,10,11,15 560:20 561:1 563:2 570:18 572:13 638:13 641:16,17 642:5,6,7 co-ops 638:20 639:3,9 640:17 642:9,15,16 643:2 coaching 485:5 Coast 662:3,9 coerce 564:9,12 568:3 716:18	717:21 718:19 719:3 cold 428:12 433:21 Columbia 744:22 column 471:17 471:19 473:14 columns 473:22 combining 511:4 come 408:16 418:15 479:12 479:15 480:1,6 484:9 487:22 488:22 490:19 490:20 536:2,5 537:7 545:6 551:22 626:1 652:19 659:3 694:10,14 728:5 740:17 comes 599:17 coming 694:20 Commencing 372:17 commission 744:18 committed 500:1,5 committee 399:20 432:8 432:19 433:5,6 433:15 438:17 438:19 439:13 443:10 446:8 456:4,19 462:9 462:18 464:17 465:10 492:11 492:15,18 555:12,15 558:10 561:13	561:18 574:20 583:13,17 584:5,9 625:22 631:16 668:9 677:15 679:3 689:17 692:8 692:12,15 709:21 710:8 710:13,17 711:4 Committee's 451:20 committees 456:20 660:21 communicate 559:21 communicated 381:17 387:17 388:14 403:18 communicating 413:3 508:19 509:14 communication 394:19 415:7 487:9 494:16 495:4 500:8 603:15 616:2 666:15 738:7 740:7 communicatio... 394:13 561:5 561:12 664:3 664:17 666:1 700:3 729:3 737:5 community 455:17 632:2 642:15 companies 435:22 439:18 443:19 446:4,5 463:8,8,11
--	--	--	---	---

Henderson Legal Services, Inc.

202-220-4158

www.hendersonlegalservices.com

HIGHLY CONFIDENTIAL

Rust, Marcus - Vol. II

March 6, 2014

9

495:15 496:9	619:12	477:10	conditions	394:12,18
496:19 498:8	compilation	concept 575:19	434:10	440:19
499:11 500:1	657:20	575:21 576:2,2	conduct 443:13	confirming
578:22 583:20	complaining	concern 393:15	445:18 674:20	500:8
584:12 618:18	486:9	393:19 394:3,4	conducting	confused 442:12
656:16 732:4	complaints	400:13 401:11	631:20 674:17	confuses 497:1
733:5,20	616:21	401:11 402:1,2	confer 581:18	confusing
company 399:17	complete 743:10	402:9,9,13	conference	489:19
448:2 451:4	743:15	591:6 592:4	465:13 583:17	consent 741:8
466:22 467:8	completed 575:5	593:21 594:3,8	584:9 677:2,22	741:17
467:19 489:9	complex 458:4	595:4,4	689:17	consequences
490:4 493:6	compliance	concerned 394:7	confers 524:15	569:18
499:12 501:2	459:19 474:19	400:8 408:6	confidence	consider 583:21
531:16 540:15	475:7,17 476:1	412:10 417:14	479:22	584:13 630:7
548:10,12	476:11 490:2	440:7 594:20	confidential	662:9
576:5 607:6,8	501:10 548:19	634:6 728:6	372:10 447:5	considered
612:17 613:2	574:16 596:19	concerning	447:12 448:2	431:9 436:10
623:8,17 624:6	697:17 734:13	382:8 383:20	449:5,12	586:4
624:16 631:9	complied 415:15	405:17 407:22	531:14 552:22	considering
658:9 668:15	461:7	482:21 486:2	554:9,10 558:4	574:5
697:1 703:21	comply 443:19	494:17 495:7	558:16,18	consist 586:12
725:16	467:15 478:9	497:20 523:21	676:13,15	consistent
company's	478:15 486:13	572:11 573:1	741:10,10	491:21 656:21
465:7	499:18 502:12	581:10 614:11	confidentiality	710:12,16
comparing	504:5 505:3	616:14 663:15	554:13 555:4	711:3 741:18
585:2	526:1,3 555:6	663:21 664:5	configured	consolidation
comparison	619:17 719:15	664:14 666:12	680:13 730:10	645:12,18
622:9	720:13	666:16 696:5	confirm 380:3	657:3
competing	complying	700:15 714:1	388:10 389:7	consult 524:10
579:11	526:7 567:3	721:5 740:8	396:7 401:10	consumers
Competition	Compound	concerns 394:16	402:12 428:2	508:14 530:6
532:15	668:20	400:19 577:9	462:17 465:20	530:15
competitive	computer	577:18 579:15	469:19 470:22	Cont'd 374:1
604:20	511:10 512:15	580:4,9,18,21	471:7,8 475:15	contact 479:10
competitor	515:10,18	581:2,9 591:2	509:13 515:8	611:3 613:5
489:6 490:16	517:6 659:12	592:1 593:5,12	515:17 516:21	706:22 707:11
491:5 574:6	concentrate	593:19 610:1	528:12,15	contained
579:11 603:4,8	668:7	731:8	543:11 569:5	515:19 663:17
competitor's	concentration	concluded	581:12 613:22	701:11
597:12	468:3	731:20 742:9	confirmation	contains 515:21
competitors	concentrations	condition	471:21	contemplated
533:17 534:3	431:7 466:8	409:16	confirmed	494:18

Henderson Legal Services, Inc.

202-220-4158

www.hendersonlegalservices.com

HIGHLY CONFIDENTIAL

Rust, Marcus - Vol. II

March 6, 2014

10

contemplating 560:8	631:21	corner 402:20	458:18,19	561:3,8,15
content 664:19	controlled 549:13	403:6	459:4,20 461:8	562:13 564:2
context 416:11	convened 372:16	corporate 447:22 478:12	462:9 464:3	565:1,11 567:4
497:22 507:22	convey 610:3	correct 379:20	466:11 467:17	567:16 568:8
529:3	conveying 610:17	380:6,20 381:4	468:5,15,16,20	569:3 570:20
continue 403:16	convince 414:22	381:5 386:12	472:2 473:22	571:7,8 574:8
409:16 451:7	415:14 422:2	386:18 388:16	474:20 475:16	574:10,17
485:12 544:19	cooperative 390:12 562:16	389:1 390:7,11	476:2 477:12	575:13,14,20
624:9	563:22 564:9	391:18 393:19	477:16 478:1	577:10,19
continued 412:4	570:2 636:17	394:3,14,19	481:18 483:1	578:5,11
454:21 455:9	636:18 637:6	395:6 396:12	484:3 488:19	581:10,17
continues 578:19 732:1	637:12,16	397:17 398:9	489:9,14 490:2	583:4,8,10
733:1	638:4,5 639:20	399:12,15,21	490:13 492:13	584:6 587:15
continuing 497:9,12 513:6	640:15,22	400:3,11,18,20	493:9,12,17	587:20 588:21
513:9 623:21	663:5 664:9	401:9,13 402:3	495:16 496:6	589:7 590:10
696:12	665:8 686:18	402:10,11	496:10,20	591:3,8 593:22
contract 467:11	688:22 689:4	404:1 405:6,13	498:9 500:2,16	595:18 598:1
468:8,9,13	714:20 716:11	406:2 409:8	500:17,20,21	601:12 606:12
473:1 477:6,7	716:14,19	410:10 411:8	502:1,4,19	606:21 608:1
477:14 481:6	717:22	412:4,15,18,18	503:20 504:7	608:16 609:16
489:12,22	cooperatives 569:20 638:2,7	413:5 414:5,14	505:4,17	610:10 612:20
490:19 507:13	638:9,17,22	415:4 416:9	507:19 508:6	614:4,19
549:18 552:6	639:1 640:8	417:2,7,12,18	509:1,8,20	619:13 621:3,5
552:10 566:8	641:7	420:4,8,9,12	510:10 514:11	622:16 623:10
602:13	coordinate 509:18	420:19 421:21	516:3,10 517:1	624:16 625:16
contracted 548:11 624:12	coordinated 405:22 508:22	422:4 424:4	517:7,8,10,11	626:20 627:1
contractor 472:4,7,18	509:7	425:1,2,15	525:5,20 528:5	629:19 630:18
473:3	copied 614:14	427:2 432:10	528:19 530:10	630:21 634:2
contracts 472:5	615:4 617:14	432:14,19	530:13 531:4	634:16 635:17
552:4	copies 614:13	433:11 434:5	531:18 533:10	636:15,21,22
contributed 571:20	copy 380:22	434:15,16,20	534:14,15,22	637:3,6,7,10
control 468:2,3	577:21 581:1	435:1 436:12	535:5 539:4	637:18,20
489:22 535:19	625:1 683:9	437:1 438:13	540:5,6,10	638:4 640:1,4
535:21 536:22	690:8 693:8	438:20 440:22	542:18 543:4	640:5,10
537:1,5,17	701:22	442:7 444:17	543:16,17	644:19 645:14
538:3,10		444:18,20,21	546:15,16	645:16,20
		445:2,22	547:2 549:6	646:4,7,11,14
		449:14,15	553:13,18	647:8,12,15,19
		451:11,16	555:15 556:1	648:3,4,6,7,10
		452:5 453:13	557:12 558:9	648:11,14,16
		456:20 458:5	559:16,17	648:17 649:1,2
			560:9,12,13,17	649:7,8,10,11

Henderson Legal Services, Inc.

202-220-4158

www.hendersonlegalservices.com

HIGHLY CONFIDENTIAL

Rust, Marcus - Vol. II

March 6, 2014

11

649:14,15,21	478:22	518:8 520:4,19	537:2 540:15	680:13 730:9
651:3,4,7	correctly 419:21	521:1,16	540:18 647:17	curtail 567:19
652:14,15,22	422:7 423:8	522:11 523:1,7	647:20 648:2,9	718:8
653:14 654:1	424:16,18	523:11 524:7	649:18,19,22	custodian
654:11,12,16	431:2,4,15,17	524:10,15	650:10,19	625:11
655:3 656:20	435:18 450:11	526:20 544:18	651:2,6,13	customer
657:5,8 658:5	491:18 492:21	554:15,15,19	654:7,10,14,17	389:13 539:7
658:16 660:7,8	533:6 534:4	554:22 558:18	couple 540:7,12	604:16 605:17
660:18 661:11	535:16 542:3	559:22 573:6	561:6 670:21	605:18 607:18
661:14 662:8	556:13,19	614:7 615:15	686:1 713:19	607:20
662:16,20	557:9 568:5	618:11 619:16	course 658:7	customers
663:2,7,13	569:21 575:8	620:7 667:14	689:5	379:21 388:6
664:4,21 666:6	578:16 579:2	668:2 670:20	court 372:1	388:21 389:2,8
667:18 671:17	584:1 586:6	676:10 678:9	516:17 532:12	389:16 390:5
671:21 672:3	611:21 616:18	678:12 680:21	668:3 689:1	390:11,13,14
672:10,11,18	619:21 628:3	681:2,4,15,17	694:19	390:19,21
672:21 673:1,2	628:20 631:16	684:22 685:10	courts 689:5	391:6 444:1
674:5,19 675:2	632:2,7,19	698:4,9,14,19	cover 574:2	490:21 538:4,8
675:19,22	633:3 718:11	699:1 701:7,12	covered 670:5	538:8,14,16
676:4,9 677:5	732:7 733:7	703:22,22	687:15	539:3,6,16,17
677:12 679:10	Cort 646:19	709:16 713:10	create 659:16	539:19,21
679:11,16	647:7,11 726:2	713:16 715:6	680:14 681:10	543:16 604:17
691:14 698:9	Cortland 646:20	715:16 721:4	681:10	628:8 630:14
700:21 702:18	647:8	729:15 730:2	created 508:5	630:16 631:3
703:7 707:2	cost 458:22	734:5 735:8	508:22 680:19	703:12 728:12
708:5 710:3,10	459:9 460:3	739:6,20	creates 578:21	cut 517:13,13,17
710:11,14,18	490:21 507:7,9	744:10,14	732:3 733:3	599:9,10
710:19 711:6	507:12,13	count 536:1,9	creating 506:15	
711:14 712:5,9	510:4,5,6	537:10 542:5	506:19 507:10	D
712:13 713:5	556:11	658:18 659:12	507:15 509:5	D 378:1 458:3
715:17,19	costs 507:11	659:13,21	creation 561:1,2	D.C 372:13,19
716:2,19	556:9	counted 536:10	Creek 621:12	611:11
717:18 718:20	Council 626:15	537:19	crew 740:17	D1 458:10
719:16 720:14	627:8 630:2	counting 659:1	critical 405:18	daily 458:15
720:19 721:6	counsel 375:3	659:10	406:1	468:11 481:14
723:12,13	378:16,21	countries	Crystal 655:2	486:5 659:13
730:17 733:20	379:5 427:16	546:11	662:15	659:14
740:9 743:9,15	429:20 447:3	country 606:2	current 701:14	damn 606:2
corrective	448:10 449:4	621:12 641:13	currently 459:1	damp 431:5
468:17 469:3	462:10 475:11	counts 537:14	459:10 460:5	dash 671:20,20
469:10,20	483:19 484:14	County 372:1	581:1 656:2,3	database 632:1
470:18 471:3	485:5 513:10	481:4 535:15	657:16 668:17	date 378:5 472:8

Henderson Legal Services, Inc.

202-220-4158

www.hendersonlegalservices.com

HIGHLY CONFIDENTIAL

Rust, Marcus - Vol. II

March 6, 2014

12

472:11,15	483:6 484:18	706:15 707:1,7	determine 729:4	529:14 530:2
583:7 596:10	deal 703:12	707:12 727:11	735:6	550:14,19
613:19 647:13	dealings 578:14	departments	determined	598:9 670:15
651:8 652:19	731:18	539:18	525:22 632:22	671:7 678:11
653:6 655:9	deals 632:9	depicted 401:11	639:22 731:2	678:18 679:7
683:11,12	death 456:14	481:22 517:15	develop 579:10	680:2,8 685:19
690:3 722:8	debate 487:21	depo 532:11	631:19	685:22 686:14
725:11 726:4	decade 635:10	DEPONENT	developed 628:6	687:6,19 688:8
743:22	635:13 668:17	743:1	630:1	738:11 740:7
dated 402:20	deceive 517:20	deposition	developing	directed 684:1
406:21 414:13	December	372:15 378:4	433:7 609:19	687:16 691:7
434:19 438:10	406:21 410:14	389:14,22	628:1	713:16 719:7
442:16 458:8	547:5	390:4,20 391:4	dictated 604:16	directing 675:3
519:20 525:4	decertified	406:13 427:13	diesel 638:8	691:4 696:17
527:20 547:17	434:4,13 567:2	448:14 479:4	difference	direction 710:12
548:7 558:3	decide 435:17	485:14 494:12	428:17 430:20	710:16 744:8
574:1,3 583:8	478:8,14	514:14 516:16	different 382:12	directly 700:3
599:5 614:2	decided 401:2	544:1 554:9	386:5 408:22	Directors
670:3 677:10	618:17	559:19 630:21	418:13 422:13	570:12
678:5 682:13	decision 565:14	633:16 640:3	422:20,20	disagreed
684:4 685:4	660:15 674:22	644:16 676:18	434:9 458:11	425:17 426:15
686:12	decisions 439:10	693:1 701:8,20	475:2 488:16	disallow 439:16
dates 386:5	DeCoster	735:9 741:6	584:18 588:9	440:2 443:11
547:4	533:13 619:9	742:5,9 743:5	589:21 593:14	disclose 741:11
David 373:5	deep 409:5	depth 409:10	593:16 604:4	disclosed 666:18
378:14 526:11	defects 428:13	description	604:11,22	discounts
568:15 679:14	defend 589:11	697:5,12	605:4 638:11	535:13
692:20 693:9	defendant 666:2	721:18	664:10 699:3	discovery 521:4
David's 552:13	666:11	designate	differently	discuss 611:13
day 540:16	Defendants	449:12	606:4	674:16 675:20
563:9 568:18	372:10 374:14	designated	difficult 579:5	discussed
611:13 616:17	Deffner 560:5	636:12 645:1	difficulty	676:18 698:22
628:18 659:8	560:21 561:5	660:14 661:6	498:18	discusses 439:4
668:2,6 690:9	685:4,15	665:20,22	digits 392:7	discussing
711:21 723:7	delay 712:7	695:17 696:6	473:8 476:13	401:20 435:4
724:13 725:9	demanding	741:10	476:16,19	556:10
days 516:15	388:6,22 631:4	designation	568:11	discussion
521:21 537:13	density 428:14	695:1,4,20	dimensions	454:14 455:17
537:13 614:3	429:12	despite 400:19	475:4	463:17 464:17
DC 373:17	department	454:19 486:13	direct 392:9	465:9 487:19
dead 481:13	585:13 625:3,4	detail 660:7	414:16 463:3	583:18 584:10
482:1,14,22	625:7 631:1,2	details 579:17	526:17 527:2	663:20 680:6

Henderson Legal Services, Inc.

202-220-4158

www.hendersonlegalservices.com

HIGHLY CONFIDENTIAL

Rust, Marcus - Vol. II

March 6, 2014

13

730:13	458:3 465:14	735:11,17,21	653:12,12,16	581:8 586:22
discussions	469:19 470:12	736:1,4,19	Dort 626:14	595:5,16 598:7
700:6,9,11	471:8 476:14	738:18	double-check	598:12,15,19
728:2	486:1,9 494:12	documentation	573:11	608:8,21
disgusted 546:9	498:21 503:5	661:9 727:18	doubt 382:21	609:14 611:15
dismayed	518:6,9,18,21	729:2	470:1 727:7	613:3,19 614:6
627:19	519:6,12	documented	dozen 533:14	615:9 616:10
displaced	520:18 524:6	513:13,16	540:8,12 541:4	617:8,13,18
535:14	530:5 532:6	documents	drafted 436:12	618:12 678:4
disposal 712:19	534:13 541:14	381:22 382:11	drafting 582:7	679:2 682:20
dispose 711:18	543:20 553:4	384:10 388:20	draw 589:9	683:14 684:3,4
dispute 628:17	554:11,13,16	389:7,15 390:4	dried 503:15	684:15 685:3
distort 485:13	559:2,18	390:21 391:5	504:10	719:8
distorting	561:17,17	392:5 447:9	drive 376:22	e-mailed 575:5
640:18 715:9	573:13 575:16	456:7 478:17	515:9,18 517:5	e-mails 595:12
distracted	576:1 580:3,7	497:20,22	517:9 642:19	earlier 425:3
741:16	580:12 581:11	520:5,7,8	driven 607:19	440:6 476:14
distribute	583:2 615:20	521:2 554:1	607:20	486:10 491:22
691:12 692:16	629:10 630:20	561:21 573:10	driver 516:21	497:20,21
distributed	633:7,8,13,16	585:1 658:14	drying 652:10	514:14 617:6
569:10 680:12	633:20 634:5	663:8,15,17	duly 379:3	652:3 655:15
692:10	652:17 656:13	666:9 673:19	744:5	656:11 663:9
District 372:1,3	657:22 669:21	691:2 699:3	dumped 546:12	711:19 713:21
689:1 744:22	672:7 674:4	704:10 714:6	590:5	733:18 741:5
divide 603:18	676:22 677:9	doing 392:4	Duncan 735:6,6	early 506:22,22
divided 608:15	677:10,15	401:1 459:1,1	Dutch 540:1,16	507:1,6,6,18
document 377:1	678:18,21	459:10,10	540:16 541:4	507:18 508:2,2
377:21,22	682:13 683:13	460:4,4 478:6	dying 428:12	508:21,21
389:21 390:1	683:14,22	485:6,7 585:3		509:6,7,19,19
396:9,14,19	684:21 685:11	619:9 673:20	E	East 662:3,9
397:20 401:15	686:2,4 689:13	695:13 727:9	E 374:1,1 376:1	eat 418:10
403:7 404:14	689:18 691:1	Dolph 611:11	376:8 378:1,1	economic
407:7 426:15	696:20 699:8	677:16	660:14	393:12 452:2
427:11,17	701:9,13 702:4	Dominick's	e-mail 377:3	453:18 463:14
428:6 430:10	706:12 707:10	539:14,15	432:5 438:10	561:22 578:21
430:16,19	707:13 712:15	Don 670:8	492:8 503:12	690:21 691:12
431:21 432:13	713:17,21	Donald 373:13	505:12 506:12	691:22 692:4
433:10 435:4	714:22 715:10	378:15	525:4 527:4,20	692:10 710:1
443:1,3 445:12	715:12 718:22	Donovan 407:17	528:16 529:16	710:14,17
447:1,5 448:10	723:10 724:14	407:19 409:14	529:21 530:4	711:5 732:4
449:6,8 453:3	732:10 733:10	409:20 410:8	531:3 546:4,7	733:4 738:13
453:20 454:1,2	734:19 735:4,5	411:3 413:6	547:16 574:18	Ed 413:6

Henderson Legal Services, Inc.

202-220-4158

www.hendersonlegalservices.com

HIGHLY CONFIDENTIAL

Rust, Marcus - Vol. II

March 6, 2014

14

edited 521:15	584:14 586:3	403:22 405:13	732:3 733:3	endorsed 602:6
editorial 435:7	588:11 594:10	406:1 443:17	734:11,11	ends 409:6
effect 385:16	595:21 597:14	446:4 451:16	736:16 738:1	engage 557:5
428:13 451:16	599:4,10,18	452:5 453:13	eight 422:17	641:8
452:5 503:1	603:8,22	454:17 455:20	466:7,8 468:15	engaged 597:2
504:18	604:12 605:20	467:15 488:18	471:22 477:9	engaging 635:16
efforts 500:14	608:4 611:2	489:12 490:20	Eighteenth	enhances 507:11
509:18 546:9	621:7,21 622:3	492:19 495:15	374:10	enrolled 586:1
564:8,11 568:3	622:4,5,10	496:10,20	Eighth 565:13	ensure 454:15
573:2 625:5	623:21 624:10	498:4,9 499:13	565:14	enter 507:12
718:19 719:3	624:11 625:15	501:2,11	Eimer 374:17	entered 637:15
egg 372:9 374:3	625:22 626:14	502:19 503:2	Einstein 556:7	entire 415:10
374:4 379:13	628:6,12,19	508:8,12,14,16	557:3	476:9 532:5
379:15 380:19	629:18 632:11	508:18 530:21	Eisenstein	536:14,18
381:3 393:6	636:21 637:2,6	535:14 539:19	555:18,19	entities 660:4,6
394:1 395:17	637:15 638:20	540:14,17	either 401:1	660:9
398:8,8 403:14	645:12,19	542:1,15 548:9	409:10 467:14	entitled 447:7,8
403:19 404:1	647:17 648:2,9	548:10 549:4	489:12,22	447:15 487:10
409:2 444:1	648:16,22	549:17 551:13	573:16 662:13	517:18,19
489:7,7 503:15	649:7,13,16	552:1,8,9	666:10 730:13	532:5
504:4,6,10,15	650:10,17,20	556:18,18	electric 723:20	entity 617:7
504:16,19	651:1,2,6,17	560:11 563:4	725:3	equivalency
506:14,15,19	651:20 652:13	564:1,21 566:3	Electrical 673:5	633:2
507:4,7,11,16	652:21 653:7	566:13 575:1	eligible 643:1	equivalent
508:6,17 509:1	653:12,21	576:6,8,10	eliminated	633:1
509:2,6,20	654:7,14 656:6	577:3 578:20	542:21	errata 743:14
510:4 513:16	656:10,14,16	583:21 584:13	else's 484:7	ESQ 373:4,5,12
521:18 522:5	656:18 657:4,6	586:3 588:4,20	emergency	373:13 374:6,7
522:13 530:7	660:4,10 662:6	606:8 607:4	728:2	374:16
533:4 540:21	669:6 684:16	623:17 624:5	employed	essence 468:1
541:20 542:17	684:17,18	657:7 660:4,10	744:11,15	essentially 563:7
542:21 543:2	688:19 689:17	661:18,22	employee	establish 390:15
547:11,21	690:20 692:8	664:5 668:12	413:12 522:3	446:3 601:10
551:3 555:11	692:11,14	668:14,18	523:22 744:14	established
556:11 560:9	697:18 703:12	669:2,7,14	employees	379:18 557:5
560:10,19,22	705:3 708:13	693:18 697:6	425:12,16	690:16 692:4
561:1 567:10	710:13 733:19	697:16 700:20	empty 712:21	estimate 393:6
570:12,14,17	738:13	700:21 701:2,3	encouraging	658:22
571:4 572:13	eggs 385:15,15	702:17 703:5,7	611:2 730:21	estimated
573:2 576:6,8	390:6 391:7	704:13,15	ended 379:12	655:16
576:10 577:3	395:6,16	705:20 706:1	722:17	et 372:6,9
583:2,21	396:11 397:2	708:14 713:3	endorse 502:7	628:18

Henderson Legal Services, Inc.

202-220-4158

www.hendersonlegalservices.com

HIGHLY CONFIDENTIAL

Rust, Marcus - Vol. II

March 6, 2014

15

event 628:13 719:11 720:10 723:14 726:19	exceed 469:11 469:21 471:4 exceeded 468:18 469:4,7 470:14 470:18,19 479:1 exceeding 459:4 excellent 504:1 668:3 exception 490:9 490:12 491:6 491:10 493:16 495:8 500:15 602:10 exceptions 494:17 exchange 557:5 564:14 566:11 exclusion 579:12 exclusive 702:17 excuse 407:12 439:1 447:3 497:5 526:5,20 565:12 581:22 615:15 623:14 626:19 687:17 709:5 executed 380:19 380:21 741:12 741:17 Executive 668:9 exemption 386:17 387:11 565:8,18 686:18 exhibit 376:9,10 376:11,12,13 376:14,15,16 376:17,18,19 376:20,21,22 377:1,2,3,4,5,6	377:7,8,9,10 377:11,12,13 377:14,15,16 377:17,18,19 377:20,21,22 392:6 399:4 402:17 406:6 406:10,12 414:6 427:6,10 434:18 438:5,6 441:6,9,12 442:19 445:4 448:12 449:16 452:18 457:20 458:2 461:20 462:7,11 465:15,18 486:22 487:2 492:3,7 494:6 494:8 503:9 505:21 506:3,4 511:11 514:5 515:8 517:10 517:21 518:3 519:7,11 524:21,22 526:13,14,21 529:9 531:6 543:7 545:12 545:16 546:3 548:6 550:8 552:16,20 553:20,22 554:11,12 557:20 558:2,7 558:19 559:5 559:15 568:14 568:21 570:6 570:10 573:17 575:11 582:19 583:1 586:16 586:20 595:6	598:2 607:11 609:8,10 613:8 613:12,13,18 614:2 615:3 618:13 620:17 620:21 621:1 626:3,7,9 629:3,7 636:7 645:22 669:18 669:18,21 671:3 676:6,12 678:2 679:1,6 682:10,18 688:1,5 689:13 689:19 690:10 690:14,15,17 690:18,20 691:5 692:3,6 692:9,9,16,20 693:3,6 696:18 709:16 710:13 711:5 713:13 738:12 740:3 741:7,12,14,22 exhibits 689:12 existence 688:19 expect 487:20 634:21 635:13 expected 479:15 634:15 expensive 667:18 experience 530:12,14,20 635:12 expert 475:3 expires 744:18 explain 416:12 417:19 explained 381:13 570:16 Explaining	382:15 explanation 415:19 export 662:1 exports 405:18 405:21 546:15 547:2 expose 578:14 731:18 expressed 610:1 extend 556:17 extent 563:10 664:16 external 578:13 731:17 extra 436:1 605:17 727:10 extremely 602:6 628:1 F facilities 466:15 466:20 467:14 468:2 481:8 486:3 489:13 498:4 521:18 522:5,13 523:12 597:8 606:7 641:22 649:17 651:21 656:7 658:2,14 662:2 726:21 727:2 728:6 facility 407:19 412:3 436:2 466:21 467:2,4 467:8,9,10 477:4 481:4,10 481:17 482:22 516:8,11 539:20 540:19 541:6 542:14
---	---	--	---	---

Henderson Legal Services, Inc.

202-220-4158

www.hendersonlegalservices.com

HIGHLY CONFIDENTIAL

Rust, Marcus - Vol. II

March 6, 2014

16

597:13 646:16 652:10 661:17 662:21,22 fact 382:10 385:17 387:8 393:18,22 394:6,7,11 395:2,4 400:20 409:19 410:9 413:3,18 414:2 417:10 420:1 451:14 459:17 493:14 500:7 523:4 539:2,6 547:1 575:18 577:9 583:12 584:17 590:7,8 594:19 597:1 601:15 602:10 606:3,5 608:6 614:18 617:15 617:16 634:10 694:3 700:7 702:20 704:11 705:19 709:21 710:1 730:16 731:2,4 733:17 737:7 factors 557:9 facts 734:16 737:9 fail 415:2 417:15 418:16 422:6 423:17 427:1 486:15 failed 426:18 433:22 486:18 failure 482:22 484:18 486:13 491:17 566:20 567:20 718:9 fair 387:12,18	387:20 402:14 457:9 552:2 605:9,11 645:17 657:7 660:1,2 696:15 fall 504:18 566:5 false 513:18,18 620:9 familiar 521:9 630:4 631:10 family 393:15 541:15 fan 470:3 far 380:14 383:8 398:7 409:7 411:6,10 441:5 517:4 538:18 634:5,6 729:4 farm 407:18 410:4,15 467:11 468:9,9 468:13 470:3 477:7 481:6 517:16 521:20 522:4 534:10 536:2 537:8,13 537:15 538:13 540:14,18 556:9,12,12,16 590:3,3,4 638:11,13 639:9 647:17 648:2,9,16,22 649:7 650:10 650:20 651:2,6 652:14,18,21 653:7,12,21 654:7,14 farm's 538:6 farmer 384:15 384:20 386:11	386:15 387:3,5 387:10 569:20 705:15 farmers 513:16 551:5 686:22 689:7 farming 642:15 farms 373:11 375:3 378:17 378:21 410:1 410:18 432:1 467:1,9,20,22 468:2 477:1,6 477:14 480:21 513:22 521:17 523:1 527:6,22 528:9,18 532:15 533:13 537:10 540:1 540:16,16 541:5,15 548:12 549:5 574:22 618:11 619:18 621:12 655:2 662:6,15 667:14 668:16 668:17 669:2 672:15 734:5 fast 458:15,16 459:12 732:14 fat 418:9,11,12 418:18,22 419:3 420:15 422:9,11 424:12 favor 457:4 489:2 favorite 626:11 FBI 726:20 727:22 728:1,4 729:4,8 FDA 377:7	533:18 534:3,6 534:14 535:3 536:13 537:7 538:4,17,20 542:2,9,13 543:12 544:13 feather 408:15 February 379:18 380:4 380:18,22 387:16 388:12 388:13 521:21 530:4 531:3 560:4 569:1,6 685:4 686:12 688:4 feces 428:20 431:1 federal 665:15 666:4 689:1 federated 688:22 feed 408:17 409:5,5 418:10 418:21 419:2 421:1 422:12 422:19 723:17 724:3,4 728:7 feeder 411:12 411:15 feeders 409:11 feeding 408:14 fees 571:12,20 feet 480:10 fell 431:11 felt 463:5,7 505:20 574:11 597:21 fide 570:2 686:22 field 604:19 fifth 686:3,3	fighting 416:13 figure 411:19 file 573:1,10 722:9 724:16 727:18 filed 726:11 files 521:6 543:22 filing 664:2,12 finally 405:4 458:21 460:3 financially 744:15 find 415:1 422:5 423:16 461:21 462:11 539:5 545:18 575:6 669:18 682:22 685:12 686:7 733:12 finding 429:11 709:18 finds 482:16 fine 448:9 493:20 497:11 510:14 511:18 527:1 532:10 554:6 702:1 finish 391:2 437:17 527:17 579:21 674:1 681:9 737:6 finished 531:22 689:10 709:13 728:16 finishes 398:17 606:14 fire 472:7 fired 413:7 472:4,18 724:22 firm 561:10
---	--	--	---	---

Henderson Legal Services, Inc.

202-220-4158

www.hendersonlegalservices.com

HIGHLY CONFIDENTIAL

Rust, Marcus - Vol. II

March 6, 2014

17

578:2,3 587:4	five 446:3	630:11 631:14	639:14 640:4	624:17 625:9
590:17,21	458:22 459:9	632:4,15,21	641:3 643:5,7	625:17 627:2
592:13,19	460:4,6 477:11	folks 378:10	644:15	633:5 634:17
593:3 594:5,19	486:4 504:20	413:3,17 414:2	forecast 691:13	635:18 643:12
714:4,5,8,18	537:13 540:2	433:3 435:9	710:2	668:19 679:18
715:15	739:3,8	464:22 546:11	foregoing 743:4	684:11 700:16
firms 429:9	flash 376:22	551:4 707:20	744:3,5	701:13 703:9
first 392:11	515:9,17	follow 392:21	forget 520:22	704:16,22
393:4,8 395:13	516:21 517:5,9	393:3 566:20	534:8 641:13	706:2 708:19
399:1 402:22	flashlight 536:7	567:20 674:6	form 386:3	710:5,20 711:8
403:11 405:3	flat 620:8	710:9 718:10	387:1 395:19	711:15 712:14
427:15 438:16	flock 393:4	follow-up	401:14 404:2	714:21 716:4
439:16 441:12	395:15 396:10	739:16	406:3 412:6	716:12 718:13
443:11 449:9	396:22 399:18	followed 557:8	413:20 415:17	719:18 721:15
449:11 451:2	407:14 414:20	following 557:8	419:13 436:8	724:11 726:7
463:5 466:7	417:17 418:8	562:4,11 576:9	439:22 441:1	730:18 731:6
473:13,14	418:20 419:19	677:17 715:21	443:21 446:9	733:8 739:5
496:5 499:6	420:14,19	716:7 718:1	446:16 460:17	formed 600:7,18
501:15 505:13	425:13 458:18	719:20	461:9 468:6	former 523:22
521:12 527:16	464:2 465:3	follows 379:4	470:11 472:20	Forsman 533:13
527:19 529:20	489:21 506:21	599:11	474:1 475:9	forth 468:14
531:12,20,22	507:5,18 508:2	food 409:7,10	482:3 483:2,10	494:16 495:4
546:3 547:8,14	508:20 509:6	411:6,10	483:18 484:20	fortunate 499:5
547:16 555:22	509:18 658:8	458:17 479:13	485:8 495:17	499:8,10
565:6 568:22	711:20 713:4	541:2	496:11,21	forward 618:2
574:19 581:7	flocks 407:10,13	Foods 489:8,11	502:20 505:5	fought 458:21
584:4 595:12	413:4,19	489:16 490:5	505:18 507:2	460:2
598:12 599:21	415:11 421:20	490:10 491:4	509:9,22	found 420:5
607:12,16	424:2 459:3	493:15 494:19	514:18 520:20	428:16 430:20
612:7,9,10	610:7,21	495:9 500:14	522:6,14 523:3	511:12 534:9
615:20 617:18	656:18 712:8	501:8 502:16	524:1 535:6	539:3 549:22
617:21 618:13	floor 474:6	505:15 548:22	537:9 549:7	683:5 727:9
618:15 623:13	FMI 377:19	549:5,12,15	551:16 563:5	foundation
629:16 631:9	390:8,10 591:3	551:10 561:6	563:12 586:8	496:12,22
670:1 683:13	591:6 592:1	574:6,14 603:4	588:5,22	516:20
685:3,14	593:2,4,5,12	603:7 608:8	590:11 591:9	four 419:3,4
686:15,19	593:19 594:9	719:13 720:11	594:1,13 595:2	451:1,9 474:9
689:12,18	594:15,16,16	731:4,14	597:10 606:10	474:11 540:2
709:19 711:18	594:21 604:17	force 534:21	606:15,22	582:17 614:3
734:9 739:4	625:15,19	535:3,11	608:11,17	638:10 733:15
firsthand	626:7 627:14	forcibly 569:19	609:4 610:11	739:2
410:11	628:7 630:2,8	Ford 639:11,13	611:6 622:17	fours 638:18

Henderson Legal Services, Inc.

202-220-4158

www.hendersonlegalservices.com

HIGHLY CONFIDENTIAL

Rust, Marcus - Vol. II

March 6, 2014

18

fourth 392:20 447:2 449:21 450:2,4 463:4 562:10 733:9 frame 615:15 framed 686:21 Francisville 648:9 Frank 605:21 634:10 Frankfort 654:8 frankly 725:15 free 410:18,18 410:20 411:1,3 428:21 530:8 589:12 fresh 611:14 701:3 734:11 736:15 738:1 friend 605:21 front 419:2 443:1 511:9 517:6 519:13 520:10 613:14 636:6,7,13 645:8 656:13 677:14 691:2 696:19 699:9 701:9 706:12 713:14 715:13 729:16 738:14 739:22 740:3 frustrated 602:6 608:6 fuel 638:8,8,11 638:15 640:7 641:9 fulfilling 694:18 full 534:20 535:3,11 680:9 further 439:7 464:2 465:3	513:10 517:12 518:21 666:20 675:4 697:21 734:3 740:12 744:13 <hr/> G G 372:19 378:1 744:2,20 gas 479:19 642:20,20 gasoline 638:9 Gene 392:16 395:3 438:11 454:3 487:9 494:17 495:5 499:4 500:7 506:13 508:20 509:14 546:4 547:9,9,17,19 550:19,20,22 574:19 575:19 579:18 580:1,2 580:8 587:1,9 590:15,22 591:1,5,20 592:15 593:22 595:17 596:1 596:22 597:22 609:15 613:20 614:10 617:8 617:14 626:19 629:17 678:4 679:2 general 375:3 378:20 495:3 521:16 522:11 523:1,11 614:7 618:10 619:15 620:7 703:11 generated 534:3 534:6 537:17	734:21 735:1 gentleman 432:12 Georgia 467:11 470:3 472:6 477:8 651:18 652:14 662:7,9 662:16,21 Georgians 662:13 Germantown 653:21,21 654:2 Germany 605:22 getting 500:14 544:20,21 683:16 687:17 727:1 741:6 giant 480:12 Ginnane 503:13 503:14 682:14 682:21 684:4 give 381:21 382:5,11 426:10 448:10 461:20 462:12 468:9 470:7 479:21 519:11 520:6 526:21 544:1 545:19 559:6 589:11 605:17 626:10 666:22 669:20 670:18 676:10 682:21 683:10 688:9 690:7 693:10 735:16 737:14 given 458:22 460:3 526:3 534:10 540:9	563:9 588:14 617:8 743:10 743:16 744:10 glanced 559:20 go 391:12 397:12 410:1 413:22 414:20 415:18 419:19 422:8 440:16 444:3,10 448:16 457:15 464:8 485:14 490:19 502:6 503:22 504:19 505:17 507:5 509:3 510:3,6 511:20 512:9,9 514:3 516:17 530:17 532:12 538:7,16 544:3 544:9,16 550:1 553:15 555:8 566:11 568:10 580:8 586:9 589:11 596:11 597:8,12 598:6 599:21 602:4 603:13 606:15 607:4 608:5 615:3 619:14 627:3 642:15 643:14 652:7 664:21 670:10 679:6 684:8 686:2 693:10 694:5 695:11 695:11,19 696:10 702:6 703:10 704:4 704:19 706:5 708:9 709:13 717:1,2,4	719:12 725:17 735:5 goes 422:1 440:12 542:8 556:11 566:17 567:17 695:1 731:22 going 380:7 412:3 414:16 416:7 417:5,15 418:12 422:19 426:8,9 429:18 431:20 470:6,7 478:9 485:4,8 485:11 488:14 494:5 497:8 503:18 504:18 504:20 510:6,7 513:5 514:1 516:12,19 518:15,17 521:2 524:11 526:18 527:1,2 528:22 532:11 543:18 548:5 553:11,19 558:6 559:6 560:19 581:6 582:10 587:3 589:22 590:20 591:22 592:1 592:19 593:4 593:18 594:4 595:11 596:18 600:7 603:16 604:7 605:16 606:4 615:14 618:2 626:6 640:12 645:21 646:21,22 661:17,21 664:15 669:16
--	--	---	---	--

Henderson Legal Services, Inc.

202-220-4158

www.hendersonlegalservices.com

HIGHLY CONFIDENTIAL

Rust, Marcus - Vol. II

March 6, 2014

19

670:15 671:4	great 583:19	456:12 551:18	477:16,22	406:15 672:9
673:11 674:6	584:11 661:21	551:19,19	478:3 557:4,7	673:8
676:16 678:10	683:17 729:12	Grocers 372:5	566:13,19	handwritten
678:18 679:6	742:2	706:15 707:7	567:14,21	670:16,19
679:17 681:14	greater 417:17	707:11	610:6,20	671:20,22
681:22 683:3	460:7 578:15	grocery 539:13	628:16 697:19	672:6 673:17
684:7 685:8,11	731:19	539:14	718:10 734:14	674:3 675:4,15
685:18 689:11	greatly 688:20	gross 633:6,13	738:2	hanging 411:14
693:6,7,10	Greg 492:8	ground 654:14	guilty 722:17	hangman 435:5
699:1,5 703:16	493:5 553:12	grounds 512:20	Guthrie 648:22	440:7,18
719:13,14	555:11,14	group 381:6	648:22 649:3	441:17 442:5
720:11 727:10	558:13 583:13	382:17 570:18	guy 418:14	442:15
727:14 728:5	585:16 614:16	571:18 604:20	653:4 667:18	Hanson 373:6
728:22 736:21	615:1 631:5,6	625:20 643:9	guys 559:6	378:12
738:21 739:17	695:2 700:1,9	643:19 644:10	695:7	happen 412:4
741:13	Gregory 392:16	644:13,17		540:12 551:6
good 379:7,8	395:3 397:10	726:22	H	606:2 659:15
400:7 414:22	398:6 438:11	groups 513:19	H 376:8 639:19	727:3,10
420:11,17	454:4 487:9	672:15 674:17	hair 568:17	happened
421:19 462:4	494:17 495:5	728:5	Haley 575:2	537:15 551:14
497:5 510:12	499:4 500:7	grow 436:2	578:3,3 579:18	584:17
555:1 587:4	506:13 509:14	450:9 452:22	679:14,15,22	happening
590:2,21	546:4 547:17	578:19 732:1	Haley's 575:7	408:15
592:20 594:6	550:19 574:19	733:1	581:9	happens 418:14
605:21 612:12	575:20 579:19	growth 646:2	half 393:7 428:7	419:1 482:13
652:12 678:14	580:1,2,8	guerilla 673:9	448:8 504:16	508:9 568:16
741:2	587:1,9 590:16	673:10 674:11	506:7 603:9	hard 496:3
goods 637:21	592:15 593:22	674:16	653:9 655:17	628:1
638:1,6,12,16	595:17 597:22	guess 505:20	656:17	hardware
639:9,20,21	598:13,16,20	564:17 740:16	halfway 521:13	638:19
641:7 642:9,17	599:1,1 601:13	guideline	527:4,15,19	hatch 403:12,20
Government	603:13 609:15	417:11 425:10	546:8	405:4 463:4
615:22	613:5,20	477:19	Hamilton 374:8	712:7,20
grading 540:19	614:10 617:14	guidelines	740:22	hatches 712:11
602:20	629:17 634:9	392:13,20,22	hand 402:20	hate 501:14
grapevine 587:2	678:4 679:2	393:3,22	471:17,19	hailed 540:18
590:19 592:18	710:1,9	399:21 400:5	659:10 669:20	Hawk 651:6
594:3	Gregory's	403:13 405:6	693:6,7	head 432:7
gratuitous 694:1	381:20 448:13	420:4 425:9	handed 572:21	health 429:8
694:3	615:9 616:10	433:8 434:14	handled 548:10	hear 518:13
gray 564:20	617:8	436:11,14	549:4	681:11 682:5
568:17	grew 429:13	459:13 468:10	handwriting	721:10 732:14

Henderson Legal Services, Inc.

202-220-4158

www.hendersonlegalservices.com

HIGHLY CONFIDENTIAL

Rust, Marcus - Vol. II

March 6, 2014

20

heard 383:3,6 383:11 454:13 591:12	508:5 509:1,5 509:20 723:19	honestly 479:17	430:21 431:11	669:22 678:21
help 575:15 609:15 611:20 684:22	high-rise 542:9 542:13,17,19 543:3	hopefully 464:3 667:4 676:7	husbandry 608:3 693:19 697:18 734:14 738:2	682:12 686:4 687:10 689:14 690:19 693:4 742:1
helps 565:9	higher 431:6,7 431:13 505:4 534:2,11 537:10 585:7	hoping 591:5,20	Hy-Vee 605:1	identified 395:3 439:5,8 453:5 535:18,21 536:21,22 537:4,18 538:2 538:5,9,13 578:4 656:7 660:11 695:3 723:11
hen 428:18 430:21 431:9 443:14,16 444:17 445:9 445:20 456:11 485:20 515:13 587:4 590:22 592:20 594:6 659:7 712:19	highest 429:12 536:1 542:10 542:14	hormone 431:8	Hyde 654:14,17	identifies 405:4 481:3
Hendrix 399:13 420:2,11,18 421:19 423:21 438:12 458:3 479:5 492:14 574:21 575:13 670:2	highlighted 519:12	horse 728:9,13	I	identify 518:2,9 630:6
hens 393:5 474:14 656:15 659:22 697:17 711:19 730:21 734:12	highly 372:9 447:5,12 448:2 449:5 531:13 552:21 554:9 554:10 558:4 558:16,17 676:13,15 741:10	hour 448:8 659:6	i.e 566:13	identifying 397:3,8 417:11 439:12 442:14
hereto 744:15	Hinton 492:8 493:5 553:12 555:14 558:13 583:13 585:16 614:16 631:5,6 645:5 695:2 700:1,10 708:1	hours 521:17 522:4,12,18,20 523:2,11 728:18 740:16	idea 426:7 429:1 432:16,21 440:1 459:6 464:13 465:6 469:14 471:6 473:5 480:3 493:5 523:9 536:16 549:8 565:20 572:22 591:19 599:12 599:15 612:21 625:6,10 634:19 635:2 635:19 722:13	identity 636:18
hey 592:12 600:21 706:21	hired 667:19	house 393:9 395:14 422:16 428:18 430:21 434:9 466:9 468:4 470:5 476:9 477:11 484:8,10 485:2 485:20 523:19 536:8 542:13 657:19 659:8 659:14,17,22	identification 399:5 406:7 414:7 427:7 438:7 448:14 449:17 457:21 465:16 492:4 494:9 503:10 505:22 514:6 517:22 519:8 525:1 526:15 529:10 531:7 543:8 545:13 552:17 557:21 570:7 573:18 582:20 586:17 595:7 598:3 613:9 620:18 626:4 629:4	idiots 728:4 II 372:12 378:3 Illinois 374:19 642:3 653:12
Hickey 373:5 378:14 486:22 487:5 512:5 554:17,21 558:12 692:21 693:2	hit 511:14 512:1 654:12	housed 429:11 656:16		immediate 491:17 502:18 503:1 504:20
hiding 537:11	hold 423:15 479:8 512:16 678:11 685:16 709:12 737:5 738:5 739:15	houses 409:6 431:9 478:17 478:18,19,20 525:19 542:17 542:20 543:3 712:20		immediately 504:4 671:19
high 408:18,18 411:12,16,18 506:14,15,19 507:10,16	holding 565:7 565:17	humane 514:10 515:19 516:9 517:1 721:6 730:21		immunity 665:16
	home 679:1 696:10	Humans 482:18		impact 405:5 436:21 440:21
		humidity 428:18		implement 392:13,19 623:22 624:10 631:20
				implementation 456:1 465:2 507:17

Henderson Legal Services, Inc.

202-220-4158

www.hendersonlegalservices.com

HIGHLY CONFIDENTIAL

Rust, Marcus - Vol. II

March 6, 2014

21

implemented 451:10 455:4 488:21 490:8 506:21 571:6	increase 393:14 510:9 528:1,19 588:4,21 660:1 712:19	individuals 618:18	485:4,10,11	investigation 727:8
imply 616:3	increased 528:20	industry 386:9 392:21 393:3 450:10 453:1 455:1,11 507:5 509:3 533:4 547:12,21 571:7 588:12 596:3 597:17 603:18 604:12 607:22 608:4 608:15 628:8 645:12,19 656:10 657:4 690:20 710:13 738:13	intended 436:22 451:15 452:4 453:11,12 454:16	investigator 536:2
important 548:18 557:4	increases 456:15 507:8 527:7 528:10	industry's 507:7 510:4 628:6	intent 435:21	investigators 537:16
imposition 578:19 732:2 733:2	increasing 464:1 578:21 732:3 733:4	information 447:16 448:3 557:6,7 564:15 566:12 622:9 623:20 624:9	intention 387:18 388:15	invite 571:9
improper 408:19 616:1	indefinite 482:4	informed 632:15	interact 631:14 632:1	invited 484:9 601:22
improvements 403:15,20 404:15,22	Indiana 638:13 638:14,14 639:17 642:12 646:12,20 647:8,17 648:2 648:10 653:22 654:8	information 447:16 448:3 557:6,7 564:15 566:12 622:9 623:20 624:9	interested 744:16	involved 401:2 560:22 618:20 660:22 699:14
in-house 614:19 615:10	Indianapolis 641:19	industry's 507:7 510:4 628:6	International 689:3	involvement 549:19 661:2
inaccurate 652:16	indicate 390:21 460:15	information 447:16 448:3 557:6,7 564:15 566:12 622:9 623:20 624:9	interpret 563:8	involves 631:9
inch 473:21	indicated 391:6 402:2 403:2 420:2 452:17 452:19 534:12 534:19 633:9	informed 632:15	interpretation 624:20	Iowa 521:18 522:5,13 648:16,22 649:7 727:1
inches 393:9 395:14 474:7 588:11 607:6,7	indicates 465:21 466:6 591:1	informed 632:15	interrogated 695:18	Irving 569:1,6 686:10 688:3
incident 413:8,9 727:16	indicating 415:13	informed 632:15	interrogating 695:20	Isaacson 556:5 561:10 569:1,6 577:22 578:4 581:20 663:9 663:20 679:8,9 679:13 680:1 680:12 682:7 686:10 687:9 687:21 688:3 688:15 714:1 715:15 729:21 730:3
incidents 534:10	indication 633:11 657:3	informed 632:15	interrogation 431:21 513:11	issue 408:17 436:11 449:5,7 451:22 629:13 631:9 632:9 634:22 675:20 694:10,12,17 694:20 710:1
include 533:9 557:8 691:13 703:6 704:14 710:2	indicator 431:9	inherently 579:4	interrupt 429:18	
included 502:11 658:14 736:16	individual 418:8 422:14 464:14 465:7 622:10 659:14 701:8	initially 436:6 436:12 491:2	interrupted 430:13 737:21	
includes 710:18 711:6,9 741:14	indicating 415:13	initiate 416:7 417:5	interrupting 475:12	
including 548:10 636:17 640:15 701:11	indication 633:11 657:3	initiated 451:2	Interruption 624:1	
incorporates 575:18,21	indicator 431:9	injured 481:13	intervenes 450:10 453:2	
incorrect 565:13 633:3 634:12 635:16	individual 418:8 422:14 464:14 465:7 622:10 659:14 701:8	inspected 410:8	intervention 450:13 453:4	
	individually 695:6	inspection 536:6 537:12	introduce 574:22	
		inspectors 537:12	introduction 514:1	
		instances 513:13 513:16	inventory 450:6 450:8 452:22 505:9	
		instigated 536:3		
		instruct 429:20		

Henderson Legal Services, Inc.

202-220-4158

www.hendersonlegalservices.com

HIGHLY CONFIDENTIAL

Rust, Marcus - Vol. II

March 6, 2014

22

460:12 532:15 535:19,22 536:22 537:1,5 538:3,10 561:13 567:22 578:5 629:22 718:11 item 405:3,16 443:11,13 445:22 468:14 469:20 470:22 486:4 491:12 566:12 640:13 697:22 732:13 items 466:6 661:7 739:8	418:12 521:16 554:18 614:6 617:13 693:10 John 373:12 378:18 669:19 741:3 Johnny 653:5 Johnson 649:18 649:19,22 650:10,19 651:2 join 384:17 388:7,15,22 390:17 500:18 564:9 568:4 574:7 596:18 660:15 674:22 716:18 717:21 718:20 719:4 joined 379:19 380:4,10 383:19 387:16 388:11,13,19 391:21 393:16 394:9 399:20 399:20 400:20 400:22 401:8 502:16 546:20 583:10 596:9 597:1 625:14 661:9,12 662:17,18 724:8 joining 382:14 383:15 489:16 491:9 505:1,15 662:22 720:12 725:6 Joseph 375:2 618:10 jostled 429:12 JR 373:12	Judge 735:5,6 JUDICIAL 372:3 July 622:2 jump 504:4 June 402:20 404:14 462:8 462:17 527:20 528:5,16 558:3 682:13,20 683:13 684:5 689:18 690:5 719:8 jury 517:19,20 694:19 justification 452:2 453:19	kills 507:1 508:21 509:7 509:19 kind 409:2 543:5 549:18 599:9 727:8 KKR 539:11 Klippen 598:16 599:2 600:2,5 600:16 knew 424:11 479:22 502:15 522:7 542:1 549:17 551:21 552:5 555:20 726:21 Knob 649:19 650:10 651:2 know 384:16 385:10 387:20 389:6 392:5 397:7 408:22 410:4,12 413:7 414:19 415:3 419:15,15,16 419:19 422:14 424:10,15 426:17 429:2 432:5 433:2,13 435:15 447:4,6 454:3 456:15 460:20 471:14 471:15 475:3 479:17,18,20 483:19,21 487:22 494:22 502:22 503:2 517:19,19 522:15,22 527:5,21 528:8 536:16 538:9 538:14,18	549:3 555:18 555:22 562:18 565:21 571:14 572:9,19 573:5 573:7,8 582:6 590:2 597:7 610:12,14 621:19 622:4 625:3,11,18 626:16 627:7 630:22 633:14 638:19 639:5,7 639:18 640:6 641:6 642:18 642:19,22 643:6,7,11 650:6 667:16 667:20 669:5 679:15,19 695:6 700:13 701:1,6 702:19 706:8 707:19 708:1,3,4,12 717:1,16 726:21 727:11 727:13,13 728:8,9 knowing 707:22 knowledge 410:11 454:7 454:10 490:7 597:13 599:19 663:15 665:7 703:12 706:6 known 591:2 593:12,19 614:21 knows 483:20 Kroger 444:1 605:2 625:21 Ky 399:13 400:1 406:18 407:9
---	--	--	--	---

Henderson Legal Services, Inc.

202-220-4158

www.hendersonlegalservices.com

HIGHLY CONFIDENTIAL

Rust, Marcus - Vol. II

March 6, 2014

23

407:11,12,12	Laughter	learned 597:4	617:20,21	554:3,8 555:3
407:16 410:5	552:15	learning 587:7	618:9,11 620:8	558:9,14,21
412:13 415:3	law 561:10	leave 594:10,22	621:6 625:5	567:5 587:14
415:13 417:10	laws 666:5	712:20	626:14 627:18	591:10 592:8
420:2,11,18	lawsuit 647:1,5	led 625:20	627:20 628:10	593:7 716:4
421:19 423:20	664:2	left 402:19	629:1,17	741:18
424:22 426:4	lawsuits 664:13	462:3 587:19	633:12 635:15	lied 387:6,9
438:12 451:5	lawyer 614:19	587:22 588:1,7	670:2 687:10	lieu 632:16
455:17 458:3	615:10 664:13	601:7 606:19	688:16	life 551:5
478:10 479:5	665:3 705:14	659:7 736:3,9	letterhead	light 488:22
486:8 492:14	lawyer's 563:11	leg 428:13	611:16	limit 459:4
492:17 536:3	lawyers 659:5	legal 563:6,7	letters 533:2,5,8	566:3,7
574:21 575:12	679:10 682:7,8	575:3 577:9,18	533:12,17,19	limitations
670:2	lay 516:20	579:14 580:18	534:13,16	567:14
KY's 455:19	layer 450:5,8	580:20 581:2,9	535:15 538:12	limited 622:9
536:3	452:21 466:9	596:13 663:9	540:9 541:16	limiting 680:21
	468:4 473:22	686:17 688:21	level 454:14	limits 565:8,18
L	477:11 656:18	689:4 713:22	469:7 470:4	565:22
labeled 696:18	layers 466:17	714:5	533:20 534:1	Lincoln 481:4
Labor 711:21	473:13,17	legality 666:3	534:10 536:4	651:6,13
laboratory	474:12,17	legitimate	604:19 664:12	line 404:17
722:18	481:14 586:1	730:20	levels 431:6	438:18 476:10
Lack 496:12,22	646:16 647:11	lengthy 677:18	444:20 468:18	507:9 581:17
Land 374:14	647:21 648:6	let's 428:6 430:3	469:3,10,21	589:9,11 633:8
language 563:7	648:13,19	448:16 486:20	470:14 471:4	633:12 654:7
671:10,16,19	649:4,10 650:1	499:3 511:15	479:1 534:10	654:10 736:7
675:7 680:11	651:14 653:8	512:9,10 524:5	leverages	737:9
680:15 684:6,9	653:15 654:3	599:20 603:14	640:22	lines 671:11
691:21 712:15	654:11,18,20	663:3 681:1	Levine 374:6	686:1
730:10 732:10	655:16 656:2	689:9 696:9	395:7,8 437:2	linked 431:7
733:10	657:10,16	699:8 734:9	437:3,9,10	liquid 492:20
large 501:1	658:13 659:1	letter 377:7	438:1 439:22	507:9 556:18
508:7,8,12,13	laying 515:13	535:5 538:21	446:9,16	list 539:8 540:5
508:14,15,16	649:16 651:20	538:22 540:17	451:18 452:7	545:6 645:8
539:13 612:16	656:15 730:21	540:22 543:12	452:14 453:16	657:19 677:14
612:22	layperson 563:8	544:4,13 545:5	456:9,21	691:14 705:22
largest 489:6	lead 455:11	563:7,11 575:6	496:11,21	710:3
623:16 624:5	leaders 595:20	611:16 613:19	497:8 498:10	listed 446:1
661:20	609:16	614:10,19	498:19 500:3	538:12 539:1,7
late 544:20	leading 403:21	615:11 616:7	500:10 501:13	557:12,14
668:6 687:18	672:17 673:13	616:12,16	501:21 519:22	581:7,13,16
728:17	673:21	617:15,16,17	553:3,12,19	583:13 655:1

Henderson Legal Services, Inc.

202-220-4158

www.hendersonlegalservices.com

HIGHLY CONFIDENTIAL

Rust, Marcus - Vol. II

March 6, 2014

24

712:18 713:1,7 714:15 718:2 738:18 listen 398:20 720:20 lists 677:18 literally 619:20 litigation 521:3 litter 428:19 430:22 431:5 little 439:7 477:4 479:21 480:12 630:12 642:16 651:15 654:21,22 665:9 705:18 live 657:21 658:1 LLP 373:6,14 374:8,17 loaded 739:6 local 638:13 642:6 726:17 locate 676:11 678:10 684:22 689:11 690:15 located 639:16 641:17,21,22 locates 683:9 locating 685:10 location 541:10 638:10 725:19 log 729:7 Logan 374:9 loggerheads 424:12 logo 736:3 Lois 415:7 670:2 672:9 long 434:8 460:7 480:10 514:22 521:15 598:7	599:9 635:4 668:2 669:1 longer 504:16 look 402:19 413:12 423:12 428:6,6 442:8 446:2 447:1 466:7 478:16 481:11 487:8 491:12 499:3 504:17 505:6 525:3 526:21 530:17 532:5 536:8 537:6 544:10 550:7 553:1,7,16 558:7,15 562:2 566:10 586:21 593:3 598:11 607:11 608:14 609:2 611:10 612:6,8 613:17 617:13 623:12 623:12 624:3 639:18 640:21 644:9 651:11 654:5 655:9 670:19 671:6 671:18 672:6 673:7 676:5 678:2 688:14 695:7 697:4,11 699:8 706:11 708:20 709:15 714:8 723:10 725:13 729:10 730:1,6 734:9 741:13 looked 401:1 410:3 456:7 560:1 646:3 656:11	looking 396:9 420:14 441:6 497:19,21 562:8 568:14 569:11 600:13 680:5 700:8 714:6 looks 400:8 480:9 542:14 599:8,11,17 678:3 741:16 loophole 435:5 441:17 442:5 442:15 loose 411:13 lose 417:6 424:3 460:6 482:17 losing 416:8 541:8 568:17 loss 409:2 418:11,13 422:13,19 459:3 486:5 541:3 lost 393:20 422:10 526:5,6 540:7,11 lot 381:12 451:21 455:16 487:13 549:17 572:8 603:16 657:6,7 lots 382:5 low 409:10,11 504:12 507:9 674:13 lower 403:3,6 527:3 lucky 690:9 lunch 510:18 <hr/> M <hr/>	m 373:13 376:1 380:7 Madison 652:14 maintain 631:22 632:18 major 429:9 579:8 majority 583:19 584:12 making 393:8 395:13 396:5 405:4 452:9,9 495:8 517:12 576:19 591:2 593:11 601:13 605:19 623:2 634:12 717:15 mall 724:3 man 550:2 managed 431:10 697:17 734:13 management 383:10 388:14 394:18 395:1 400:14 401:4 401:13 402:3 402:10 439:21 440:4,10,12 456:2 506:20 571:5 595:17 manager 399:18 407:14 503:16 managers 458:4 458:4 mandated 607:22 mannered 484:22 manure 434:9 March 372:14 372:16 378:5 388:22 389:7	389:16 390:7 390:22 391:7 391:17 394:14 400:17 401:7 401:21 519:20 523:16 585:22 631:3 670:3 Marcus 372:15 378:4 379:1 400:1,4 480:18 485:15 547:9 550:19 553:7 599:21 606:13 607:12 670:3 678:7 682:21 685:15 688:7 741:17 margin 671:18 mark 399:1 430:9 511:11 515:8 558:16 741:14,20 marked 391:15 399:2,5 402:17 406:7,9 414:7 414:9 427:7,9 434:18 438:5,7 446:21 447:5 447:12 449:17 449:20 457:21 465:16,18 487:5,8 492:4 492:6 494:6,9 503:10 505:22 506:2 514:6 517:9,22 518:3 519:8,10,18 524:20 525:1 526:12,15 529:10,12 531:7,9,13 543:8,10
--	--	---	---	--

Henderson Legal Services, Inc.

202-220-4158

www.hendersonlegalservices.com

HIGHLY CONFIDENTIAL

Rust, Marcus - Vol. II

March 6, 2014

25

545:13,15	464:17 465:10	510:7 541:19	637:8 677:16	581:9 663:10
548:6 552:17	492:11 556:12	542:12 562:22	679:4 691:21	663:11 679:8,9
552:19,21	556:18 560:10	564:12,16,17	meetings 439:9	679:13 680:12
557:21 558:2,4	560:20 561:12	564:18 639:6	534:8	681:6
559:4 570:7,9	561:18 566:13	658:20 728:3	member 387:5,9	memory 381:19
573:18,20	570:18 575:1	728:11	407:3 450:19	477:13 650:4
582:20,22	578:20 583:16	meaning 489:10	457:3 548:21	708:21 709:4
586:17,19	584:5,8 610:3	563:19 605:14	549:1 555:14	mention 594:16
595:7,9 598:3	610:18 625:5	669:1	558:10 560:15	mentioned
598:5 609:8	663:5 665:8	means 429:2	563:2 570:1	594:15,16
613:9,11	677:2,15	469:14 471:14	583:13 621:14	721:11 722:2
620:18,20	689:17 692:8	471:15 505:9	623:1,9 627:1	724:21
626:4,7,12	692:11,15	531:17 534:20	637:12 639:2	mentions 401:20
629:4,6 669:17	709:21 710:17	535:10 562:18	640:17 642:19	mergers 641:20
676:6,13,15	711:4 732:2	566:16 570:3	643:18 644:12	message 610:4
684:20 690:1,8	733:3	621:20	644:17 660:20	610:18
692:16 693:4,5	markets 556:9	meant 397:10	668:8,16	met 576:9
742:1	576:6 586:3	426:4,4 658:12	677:11 692:7	583:17 584:9
market 393:6	marking 554:8	682:6 687:19	members	698:19
403:15,19	Marshall 649:13	measures	386:11,15	Mexicans 596:3
404:15,21	649:13 650:17	428:11 429:15	387:3 393:15	MFC 376:14
489:7 503:21	650:22 651:1	measuring	405:22 432:18	438:8
505:17 506:14	Mart 641:13	468:11	551:2 556:16	mice 537:12,14
506:15,19	Marty 555:18	meat 429:10	564:9 583:18	538:12 539:1
507:11,16	555:19 556:2	mechanical	584:10 628:1,7	Michael 489:8
508:6 509:1,6	Marvelous	408:17	639:8 660:22	489:11,16
509:20 535:12	690:11	media 484:9	668:13 669:6	490:5,10 491:4
546:9 555:11	materials 741:9	meet 403:12	686:21 687:1	493:15 494:19
564:22 579:1	math 473:20	433:18 443:22	691:12 692:11	495:9 500:14
603:10 660:5	474:18 475:16	450:15 468:14	714:19 716:1	501:8 502:15
661:22 684:8	matter 471:15	478:19 525:19	716:10,18	503:17 505:15
684:14,17	512:18 567:21	meeting 434:5	membership	548:22 549:5
719:12 720:11	664:19 665:2	434:13 438:17	389:9 636:16	549:12,15
732:5 733:6	695:18 718:10	438:19 439:14	637:14,18	551:9 574:6,14
marketed	May's 404:18	442:9 462:18	640:15 643:9	603:3 608:7
549:12,17	McDonald's	465:14 487:18	644:10 660:16	719:12 720:11
576:10 577:4	588:16 590:5	555:17 570:11	661:8 689:6	731:4,13
606:8	607:9	570:19 571:1,4	memo 569:2,6	Michael's 552:8
Marketers	mean 383:5	571:10,13,15	581:19 670:2	Michaels 551:2
374:5 637:2	387:20 454:8	571:21 574:20	686:10 688:3	596:2 597:5
marketing	454:11 471:11	600:8 611:12	730:3,15 731:2	602:7 603:7
462:8,17	473:21 506:18	616:8,9,13	memorandum	683:3 684:6

Henderson Legal Services, Inc.

202-220-4158

www.hendersonlegalservices.com

HIGHLY CONFIDENTIAL

Rust, Marcus - Vol. II

March 6, 2014

26

Michigan 374:18 722:19 727:13	millions 619:20 mind 491:14 mine 511:10	454:2 526:5 689:14 701:13 702:17,22	466:10 468:4 468:22 469:17 477:11,14	429:3 431:20 444:5 463:20 463:22 464:21
microscope 596:6	minimum 536:4 minus 656:1	703:4 704:12 704:14 705:3	486:5 monitoring 468:10	484:11 519:5 537:20 659:15 659:18 703:15
middle 503:13 529:15 530:5 671:8 673:8 684:3,3 719:7 719:8	minute 462:12 580:9 592:12 613:18 670:17 682:21 697:21	705:19,20,22 706:9 736:20 738:3	Monon 648:2 months 413:14 443:7 504:11 504:14,21	moved 659:17 659:19,22 691:10
Midwest 533:14 535:12 540:9	minutes 462:8 462:18 521:15 555:11 570:11	Moark's 448:10 704:13	521:19 526:2 moral 608:2	multiple 539:18 699:19 721:20 722:19
mill 587:3,8 590:19 592:18 594:4 597:19 723:17 724:4	637:9 666:22 667:5 689:16 miscellaneous 638:11,19	molt 408:7 409:1 416:7 417:5 418:20 424:2 458:10	morning 379:7 485:6 mornings 379:8	muted 512:8
Miller 375:2 378:20,20 521:16 558:17 614:7 616:8 617:14 618:10 619:15	misleading 484:21 633:2 634:12 635:16	molting 420:20 420:22 459:19	Morris 373:14 378:16 mortality 431:13 456:15	<hr/> N N 374:1 376:1,1 378:1
million 393:5 395:16 396:10 397:1 429:9 450:9 453:1 468:19 469:4 469:11,16,21 470:14,19 471:5 479:1 525:8 540:13 549:13,14 585:22 646:16 647:11,21 648:6,13,19 649:4,10 650:1 650:4,5 651:14 653:8,9 654:3 654:11,18 655:17 656:15 657:16 659:2 659:11	misread 674:7 681:19 misrepresenta... 701:17 missed 482:16 missing 685:17 Missouri 373:8 649:13 651:1,7 misspelled 590:20 misstate 485:12 misstates 483:3 712:15 714:22 715:1 731:7 misstating 612:15 737:16 mistakes 482:18 misunderstood 643:13 Moark 374:15 376:15 447:6 448:3,4,15 449:7,10,11	molts 414:20 419:19 506:22 507:6,18 508:2 508:21 509:7 509:19 mom 412:3 mom's 674:3 721:12 money 551:3 572:2 712:21 Monica 373:12 378:18,18 447:11,18 448:1,7 462:3 520:4 544:6,9 552:11 553:7 645:2 665:20 670:7 685:13 695:5 701:16 729:9 740:18 741:1,5,20 monitor 477:22 monitored 429:8 458:15	486:5 659:15 659:21 mother 399:8 401:10 402:14 409:18 412:8 413:17 672:9 674:18 675:21 676:1 mother's 406:15 673:7 675:4 motion 487:17 492:18 574:22 575:2,7,12 578:9,10,12 580:14 581:10 582:3,8 691:8 691:10,15,21 692:5 709:22 711:3 731:16 mouse 536:1,19 537:17 move 419:2,6 422:22 425:18	name 392:10 466:22 467:3,7 467:8,19 477:4 481:3 555:21 555:22 561:10 619:7 642:4,13 653:5 names 642:8 national 530:14 561:5 626:15 627:7 630:1 nature 513:14 NCCR 628:7 630:2 631:15 632:4,15,21 nearly 586:2 628:11 656:15 necessarily 614:20 708:2 neck 408:7,16 409:1 necks 411:17 need 439:9 443:19 458:14 476:17 494:20

Henderson Legal Services, Inc.

202-220-4158

www.hendersonlegalservices.com

HIGHLY CONFIDENTIAL

Rust, Marcus - Vol. II

March 6, 2014

27

545:21 557:7 557:14 585:8 598:10 602:1 611:13,18 693:8 needed 454:14 455:20 586:3 neither 632:21 744:10 NEPCO 651:17 never 397:19 401:4 434:3,3 434:12 454:1 454:13 455:6 480:2,8 522:20 524:2 546:10 594:2 597:11 637:7 693:17 727:13 740:10 new 392:5 438:19 486:22 487:1 600:7,12 600:17,22 601:10,16 603:16,17 608:15 609:3 689:1 news 484:9 514:22 515:3 519:19 newsletter 599:5 599:10,18 newspaper 724:18 726:13 727:6 newspapers 725:18 726:16 Newton 647:17 647:20 Nichols 373:7 night 400:4 514:22 536:6	536:11,12,12 536:12,17,17 537:18 722:6 nightly 536:6 nine 466:7 468:17 469:2,9 469:20 470:21 470:22 471:22 478:22 Ninth 565:9 NL 377:11 570:10 573:14 573:15 noise 512:3 noncertified 446:5 492:19 495:15 496:10 496:20 498:3,9 499:12 563:4 564:2 578:22 585:3,7 602:8 624:16 668:12 668:14,18 669:2,7,14 732:4 733:4 nonmember 564:18 567:20 718:9 nonmembers 562:15 563:21 564:12,14 567:15 568:4 714:19 716:1 716:10,14,18 717:21 718:19 719:4 nonresponsive 419:7 423:1 425:19 429:4 444:6 484:12 537:21 703:16 nonUEP 623:1	noose 435:5 440:7,18 441:17 442:5 442:15 Norco 374:15 Norfolk 661:19 North 646:6,12 654:14 661:17 725:20 northern 638:14 642:12 Northwest 372:18 Noster 649:20 650:10 651:3 Notary 372:20 744:1,21 notations 672:7 note 401:6,20 402:13 412:1 412:16 413:21 414:17 516:13 673:17 674:3 675:4,15 681:15,22 694:22 721:12 739:2 notebook 552:12 noted 497:7 694:21 695:12 695:14 696:11 735:14 743:13 notes 399:7 423:12,13 594:15 670:17 670:19 notice 540:17 636:8 706:13 707:8 noticed 479:4 notified 541:1	616:20 726:20 727:7,11 728:4 notifies 706:20 notify 681:21 notifying 590:15 November 561:13,17,22 562:8 568:8 569:9 583:7,14 583:17 584:10 663:10 744:18 number 378:3 399:4 406:6 411:2 414:6 427:6 428:11 433:16 438:6 440:2 445:18 446:2 449:1,16 457:20 461:2 465:15 466:8 468:15,17 469:2,9,20 470:21,22 473:12,17 474:17 476:18 477:5,5,9 478:21 481:11 486:4 491:13 491:14 492:3 494:8 503:9 505:21 510:16 511:4 514:5 517:21 519:7 520:1,3 524:22 526:14 529:9 531:6 542:2 543:7 545:12 552:16 557:20 570:6 573:17 582:13,17,19 586:16 588:14 588:16 595:6	598:2 613:8 619:19 620:17 626:3 629:3 636:11 639:19 640:13 643:8 644:9 645:1 646:15 647:10 650:7 655:16 657:16,18 658:1,13,22 659:16,21,22 660:1 665:6 667:8,12 669:22 670:7 678:21 682:12 682:15,18 685:1 686:4 687:11 688:10 689:20 690:19 692:20 693:3 697:8 712:7,11 738:22 741:22 numbers 448:11 448:14 528:21 534:3,6 536:14 658:12 numerous 512:20 513:13 nutrition 408:20 NW 373:15 <hr/> O O 376:1 378:1 O'Lakes 374:14 oath 379:10 701:10 object 380:7 386:3 387:1 395:19 401:14 404:2 406:3 412:6 432:15 432:20 436:8
---	--	---	---	---

Henderson Legal Services, Inc.

202-220-4158

www.hendersonlegalservices.com

HIGHLY CONFIDENTIAL

Rust, Marcus - Vol. II

March 6, 2014

28

439:22 441:1	716:4,12	594:1 615:16	463:18 464:17	511:6 512:7,8
443:21 446:9	718:13 721:15	619:3 627:2	465:10	512:9 520:16
446:16 454:6	721:16 724:11	635:1 647:4	occurs 418:11	521:12 523:18
459:5 461:9	726:7 730:18	652:2 668:19	418:13	527:10,17
470:11 472:20	731:6 733:8	669:8 672:17	ocean 479:6	529:17 530:2
474:1 475:9,11	736:8,21	673:13,21,22	Oconee 652:13	531:17 532:13
482:3 483:2,10	objecting	675:10 680:20	652:21 653:7	533:3,20
483:18 484:20	512:19 513:2	684:11 694:21	662:6,22	534:19 537:8
495:17 496:21	523:8 611:3	695:12,15	October 438:22	539:2,15 542:8
502:20 507:2	615:17,19	696:11,13	439:1,14	546:6 547:15
509:9,22	objection 391:9	702:12 704:4	442:10 443:4	547:18 548:17
512:22 514:1	395:7 397:5,9	705:10 707:13	546:17 547:17	548:22 549:21
514:18 518:20	397:18 398:10	708:18 716:20	574:1,21 599:5	549:22 554:2,3
520:17 522:6	402:4 404:9	717:10 718:21	600:8 678:5	554:5 555:7
524:1 535:6	412:20 413:20	719:17 720:6	679:1,4	557:3 558:5,7
549:7 551:16	415:17 416:1	720:15 732:8	offering 622:11	558:20 559:7
563:5,12 586:8	418:5 419:12	733:21 734:15	623:1	559:21 560:3
588:5,22	424:5 426:1,13	738:4,5 739:4	offhand 446:19	561:20 562:9
590:11 591:9	430:8 437:2,9	739:5	539:22	568:15,19
593:6 594:13	438:1 440:14	objections	officer 744:2	570:5 571:19
595:2 597:10	444:10 445:11	520:20 704:1	offices 372:17	571:22 572:4
606:10,15,22	451:18 452:7	715:7 735:15	641:21	572:20 573:5
608:11,17	452:14 453:8	observed 473:13	oh 418:16 487:1	573:16,22
609:4 610:11	453:16,21	473:17 474:12	544:8 545:10	578:2 584:7
611:6 615:15	456:9,21,22	537:14	612:10 657:13	585:18 586:15
622:17 624:17	460:17 461:16	obvious 428:10	697:21 740:1	593:14,17
625:9,17 633:5	464:4,12 468:6	429:14 703:20	okay 381:21	595:14 596:1
633:21 634:4	472:13 476:3	obviously 454:3	383:11,17	599:18 600:14
634:17 635:18	482:11 485:7	543:21 580:13	386:1 391:14	601:21 608:22
640:12 643:12	485:16 496:11	658:21 659:10	394:11 403:9	609:7 617:22
646:21 664:15	497:6,9,12	728:19 736:6	404:20 407:5,6	618:5,6 619:11
673:11 674:1	498:10,19	occasions 410:1	410:3 414:18	620:4 621:21
679:17 693:11	500:3,10	occur 393:7	427:20 435:6	627:16 629:8
694:7,20	501:13,21	443:18 579:7	437:18 439:4	636:10 637:14
698:10 700:16	505:5,18 513:5	722:5,21 723:2	443:2 449:19	637:19 639:18
701:18,21	513:6,7,9	724:5 725:4	462:19 463:6	640:6 642:8
702:1 703:8,8	517:13 522:14	726:3	467:7 473:9,10	644:22 645:21
704:16,22	523:3 529:6	occurred 438:19	476:22 481:11	650:5 652:20
706:2 708:18	543:19 567:5	657:4 721:10	488:10 494:15	653:2,11,20
710:5,20 711:8	580:17 587:14	723:15 725:20	494:22 495:2	654:6 655:1,19
711:15 712:14	591:10,18	729:5	499:18 503:7	657:13 660:13
713:11 714:21	592:7,8 593:7	occurring 410:9	506:10,11	661:2 662:18

Henderson Legal Services, Inc.

202-220-4158

www.hendersonlegalservices.com

HIGHLY CONFIDENTIAL

Rust, Marcus - Vol. II

March 6, 2014

29

664:1,11 665:1	operates 435:18	original 435:21	p.m 510:17,18	718:4 732:19
666:14 667:6	operation	Orleans 438:20	511:2,5 524:14	pages 449:9
668:5 670:22	517:17 618:21	Osborn 691:11	524:18 530:4	713:17
671:2,4,5,12	619:21 726:2	outcome 744:16	559:9,12	paid 571:12
674:7,8 676:5	operations	outlined 453:19	582:18 636:1,4	572:3
676:10 678:8,9	513:22 632:17	outlining 395:12	667:9,13 742:6	painless 668:5
680:4,10	opinion 451:20	397:17 398:7	742:8	paint 724:1
682:10 683:1	563:6 575:3,8	output 527:5,22	P.S 410:3	728:7
683:19 684:20	681:5,6 687:10	528:8,17	page 376:9	painted 723:16
686:6,16,17	687:21 688:15	outside 554:14	392:9,19 403:1	pan 411:15
687:12 689:9	opportunities	554:21 695:19	403:11 404:13	pans 411:15
689:15,22	507:9	overall 427:1	406:11 435:3	Pantego 654:14
690:6 691:20	opportunity	overly 680:20	441:12 449:11	paper 387:5
692:18 696:15	559:15 670:18	overnight	449:12 461:1	522:11 659:12
697:4 700:19	737:15	542:21	463:5 466:7	659:13,16
706:19 714:4	opposed 456:4	overseas 546:10	486:1 499:4,6	713:2,7,8
725:4,19	574:10,14	overseeing	521:13 527:16	722:14
726:13,18	588:18 605:7	421:20	527:20 541:14	papers 386:6
728:15,18	605:12	oversupply	545:9 547:13	665:13
730:8 732:21	opposition	691:15 710:4	547:14 550:6,9	paperwork
737:18 738:1	495:7	710:19 711:7	562:3,6,7	382:5
738:11 741:3	options 691:14	711:13 712:1,4	565:5 569:5	paragraph
old 652:9	710:18	712:8,13,22	574:2,19	392:20 403:11
older 478:18	order 386:9	713:5	575:12 578:8	407:9 411:1
once 418:21	443:17 447:19	owned 385:2,4,6	581:7 595:12	438:17 450:1
419:2 479:18	447:21 454:15	467:15 481:9	595:14 598:12	463:4 521:13
487:21 513:4	456:11 504:5	481:10 488:13	598:22 599:21	527:16 531:12
534:21 535:2	548:18 553:21	489:13,22	607:12,15,16	531:20 532:1
535:11 717:1,2	555:4 558:15	548:12 549:5	612:7,9,10	532:13 578:8
733:22	619:17 639:3,9	549:15,17,18	617:18 618:13	584:4 611:10
one-page 682:13	677:17 741:7	624:11 650:19	623:14 646:1	612:7,9 619:15
one-third 530:7	orders 662:1	owner 728:8	656:13 669:21	619:17 623:13
ones 422:13	organization	owners 425:17	670:1,16,17	624:4 629:16
539:22 558:18	579:8,9 600:7	723:17	671:7,8 673:8	631:8 680:9
604:14 623:6	600:12,17,22	ownership	678:19,20	686:15,19
638:11	603:17 608:1	660:5	679:8,12 680:3	688:15,17
onset 542:20	643:9 644:11	owns 641:10	685:3,14 686:3	730:14,14
open 487:19	644:13,18	649:18	686:3 687:7,7	Pardon 676:14
opened 690:10	organizations	P	687:7,8,8,14	part 410:15,19
operated 481:9	589:10 627:11	P 374:1,1 378:1	687:17,20	440:4 455:7
548:12 549:5	organizing	P-R-I-V 553:6	688:8 691:5,6	459:16 478:6,7
637:7	601:1		691:7,8 714:8	501:15 530:22

Henderson Legal Services, Inc.

202-220-4158

www.hendersonlegalservices.com

HIGHLY CONFIDENTIAL

Rust, Marcus - Vol. II

March 6, 2014

30

554:9 561:18 578:3 616:3 625:5 647:1 669:9 736:22 737:10 738:6 partial 569:19 618:20 participate 640:17 677:21 participated 547:1 575:22 participating 435:16 547:5 583:14 participation 578:18 582:7 616:15 636:20 637:2 732:1 733:1 particular 616:2 695:17 particularly 563:8 629:14 630:5 parties 744:12 744:15 partner 378:19 parts 445:15 468:19 469:4,7 469:11,16,21 470:14,19 471:4 478:8 479:1 525:8 628:16 671:3,4 party 449:8 pass 410:13 454:15 460:7,9 551:1 passed 384:10 pasted 599:9,10 pasturized 540:20	Pat 380:8 392:1 467:4 480:15 544:20 552:12 565:12 618:1 645:4 670:6 673:20 678:3 682:19 688:3 689:21 693:9 703:20 708:9 709:5 729:19 patience 740:15 patient 633:15 689:10 Patrick 373:4 378:11 patronage 643:1 Paula 372:19 744:2,20 pay 393:8 395:13,15,18 396:8,21 397:2 397:8,16 398:7 payment 571:20 pdf 685:6,7 peck 411:17 456:14 pecking 456:11 penalties 566:20 pending 430:1 524:11 Pennsylvania 374:11 people 392:2 413:10 484:5 487:14 489:1 508:9 536:14 540:14 542:1 597:20 602:19 604:3,21 605:3 625:21 671:9 671:13,14 677:18,19,19	678:5 people's 534:11 Pepper 374:8 740:22 perceived 712:6 percent 385:4,6 385:8,12,13,14 408:14 414:21 415:14 416:9 417:6,18 419:20 424:3 425:8 426:21 445:1 459:4,12 487:21 488:1,2 488:5,7,12,21 489:3,5,15,21 491:1,6 493:1 493:11,16 494:19 495:8 495:12 496:6 496:16 498:22 499:1 500:15 501:10 502:6 505:9 527:6 528:1,9,18 530:8 542:9,21 548:9 549:3 574:16 576:9 576:14,20 577:3,5,5 580:5,10 584:3 586:2 588:19 596:19,20 602:11 605:9 605:15 606:5 606:19 607:14 608:7 610:6,20 616:15 623:22 624:11 628:12 708:17 711:21 712:12 730:15 731:3,13	percentage 708:12,14,22 709:4 period 380:13 458:16 501:9 546:22 577:6 587:22 647:1,2 655:14 permitted 436:5 594:21 596:18 permitting 435:21 persistently 431:11 person 418:11 418:12 483:4,5 536:6 590:2 722:15,17 personally 579:20 585:14 640:9 644:20 pertain 711:12 pertained 444:16 713:22 pertains 712:1,8 712:12,21 713:5 petition 615:21 phase 463:22 577:4 phase-in 500:19 501:1,8 731:3 731:12 phasing 463:12 Philadelphia 374:11 phone 374:6,7 374:16 378:10 392:2 479:9 728:2 740:19 741:2 phones 479:10	phonetic 431:8 physically 410:8 659:1 pick 659:14 675:6 picture 517:16 pictures 480:9 piece 422:18 pieces 561:7 pile 462:3 place 393:5 469:15 484:7 502:1 525:14 534:22 535:4 535:12 550:22 594:14 618:18 620:11 658:19 723:4 placed 738:3 plain 409:6 Plaintiffs 372:7 373:3 378:13 379:5 698:4 739:20 plant 492:20 673:6 726:1 play 511:14 512:1 played 512:11 515:20 player 579:8 playing 604:19 678:22 pleading 722:17 please 378:7 398:16 416:18 419:7,8 421:4 423:3 437:6 444:7 457:12 461:11,13 462:13 485:15 495:21 497:14
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Henderson Legal Services, Inc.

202-220-4158

www.hendersonlegalservices.com

HIGHLY CONFIDENTIAL

Rust, Marcus - Vol. II

March 6, 2014

31

519:1,12 575:6 611:14,19 632:5 643:14 644:2 668:6,15 669:18 670:20 678:3 691:6 697:15 pledged 583:19 584:11 plugged 515:9 517:5 plus 507:12,13 655:22 657:17 point 412:17 413:16 441:3 445:17 447:2 449:22 450:3 455:21 461:2 470:5 478:3 480:7 486:15 491:15 510:13 555:2 562:3,10 562:15 565:6 567:18 568:22 630:19 651:6 696:4 pointed 569:18 points 427:1,4 458:22 459:9 460:4,6,8,8 466:10 469:12 471:18 477:11 477:20 478:4 479:2 482:17 486:6 661:20 police 722:9,12 724:16 726:10 727:11 policy 425:5 446:3,13 460:12 495:14 497:20 499:12	499:15,19 500:1 536:3 politicians 606:1 ponied 572:1 Pope 435:7 626:20 629:1 686:11 688:3 Porter 372:18 373:14 378:15 378:19 portion 428:7 515:2,5 516:8 733:18 portions 598:9 posed 611:18 position 399:16 455:19 544:12 544:14 579:9 602:19 611:17 661:22 695:16 695:21 696:1 positive 534:2 542:1 possession 523:20 possible 471:18 535:8 557:6 611:18 668:5 691:14 710:3 710:18 711:6,9 711:13 712:10 712:18 713:1 738:17,20 739:3,9 post 533:19 posted 534:9 538:3 potato 571:7 potential 450:9 452:22 527:5 527:22 528:8	528:17 602:19 665:16 Poultry 533:14 pounds 422:18 powder 504:19 505:10 684:18 power 640:22 641:1 powered 723:19 ppm 525:19 preapproved 706:14 707:6 preclude 489:6 490:4 542:17 precluded 489:16 542:19 prefaced 640:14 prefer 530:7 preferably 611:16 premium 508:17 prep 713:10 preparation 389:14,22 390:3,20 391:4 398:2 406:13 427:12 494:12 559:19 630:21 640:3 644:16 preparations 397:21 prepare 575:15 614:19 615:10 704:12 727:18 729:2 prepared 458:3 503:6 514:10 532:19,22 618:10 637:19 691:22 703:4 719:8	preparing 529:20,22 659:9 presence 378:8 present 375:1 571:5 645:13 677:17 presentation 572:5 presented 449:6 561:21 575:19 presenting 520:5 president 395:3 399:10 587:9 626:20 634:11 pressure 578:21 732:4 733:4 pretext 588:3,20 pretty 572:2 654:4 726:14 prevent 450:19 475:12 500:14 prevents 447:21 previous 392:8 458:11 554:10 668:11 previously 379:3 391:15 434:17 462:7 487:5,7 520:7 543:20 609:7 672:12 690:1 711:19 price 502:18 503:1 510:5,10 530:16 540:8 556:11 564:14 691:13 710:2 prices 393:14 394:1 395:5,17 396:12 397:2	398:9 404:1,18 405:17 406:1 464:3 465:4 504:4,7,12 505:4 556:9 564:14,19 588:4,21 639:21 640:6 pricing 695:3 primary 454:22 652:1 principal 490:16 491:5 580:17 619:12 printed 505:19 545:5 prior 382:14 383:14 388:21 389:17 391:8 394:4 449:4 485:12 662:22 664:1,12 665:4 702:15 725:6 prison 722:19 722:22 PRIV 377:9,10 552:20 553:6 558:2 privilege 681:16 privileged 561:12 664:16 privy 549:16 probably 451:6 457:6,19 533:14 562:5 562:11 564:8 590:12 602:18 625:2 714:14 715:22 716:3,8 716:17 718:2 725:15 739:17 problem 396:16
---	--	---	--	---

Henderson Legal Services, Inc.

202-220-4158

www.hendersonlegalservices.com

HIGHLY CONFIDENTIAL

Rust, Marcus - Vol. II

March 6, 2014

32

420:20 604:1	736:1	696:20 697:5	394:17,18,22	609:20 610:2
604:10 691:15	producer	699:12 732:6	395:1 400:20	611:5 612:12
710:4,19 711:7	384:20 387:10	733:6 734:10	401:1,4,5,13	612:13,15
711:14 712:2,5	490:20 492:19	production	402:3,10	616:22 618:17
712:9,13,22	549:20 552:5	407:19 409:3	403:14 405:9	622:8,10,12
713:5	560:9 563:4	458:4 466:14	416:6 417:4	623:18,22
procedure	564:2 570:3	466:20 489:7	432:10,13,14	624:7,11 626:1
633:21	571:17 588:10	490:22 507:8	435:12,13,15	628:2,5,11,16
proceed 618:17	610:3,4,19	542:22 556:12	435:17,17	628:20 630:1,8
proceeding	612:14 621:22	556:17 565:8	436:6 440:9,10	630:11,13,17
744:5	622:3,5,5,10	565:18,21	441:20 444:4	631:4,10,13,22
proceedings	628:19 697:18	566:7 575:1	451:1,9 455:7	631:22 632:4,5
744:3,9,12	producers 372:9	610:6,21	467:13,16	632:6 669:4
process 492:19	374:3 379:13	618:20 624:12	478:13 487:10	675:1 680:14
551:13 610:2	379:15 380:19	653:1 656:6	487:20 488:15	680:19 681:10
611:4 616:22	381:4 384:16	657:19 658:17	489:17 490:2	683:4 684:7
622:12 655:22	386:11,16	661:16 708:13	500:19,19	719:14 720:12
695:10 699:15	387:3 395:17	733:19	501:1 502:9,16	724:8 728:13
700:8	502:5 513:17	products 540:21	503:18,19	730:20,22
processing	533:4 541:20	541:2 555:11	504:17 505:2	731:17,18
489:7 552:1	546:11 552:4	556:10,11,13	505:15 525:9	732:1 733:1
processors	556:8 560:22	561:1 570:13	527:8 529:8	program's
551:6	571:5 574:11	570:14,18	537:17 542:16	631:15
produce 432:2	576:16 583:3	572:13 573:2	542:20 543:3	programs
447:13 504:11	589:8 594:10	576:7,8,10	567:1 571:6	506:21 507:19
521:3 544:5,13	595:21 603:22	577:3 579:2	574:7,15	589:20 604:13
566:14 607:4	604:18 611:2	588:11 618:19	578:13,14,19	604:22 616:14
660:4,10	621:7 625:16	637:6,16	579:6 586:1	prohibit 543:5
produced	626:1,14 628:7	649:13 650:17	587:5,19 588:2	prohibited
385:16 403:2,8	628:12,15	651:1,17 660:4	589:7,9,18	543:3
427:11,19	629:18 632:11	660:10 664:6	590:9,22 591:7	prohibiting
429:10 430:19	636:21 656:14	Professional	592:6,20 594:6	452:3
435:1 447:6,12	657:6 686:22	372:20	594:11,22	prohibition
448:1,2,4	688:20 689:6	profile 674:13	596:12,13	451:11 453:5
501:11 518:10	producing	profits 510:7	601:8,10,11,16	453:10 488:17
520:6,9 521:6	449:8 508:16	605:19	602:1 603:3,7	projected
531:15 543:21	520:11 657:6	program 379:17	603:17 604:1,2	405:10
548:11,11	669:6	379:20 380:6	604:11,12,15	promise 694:19
549:4 573:6,9	product 503:15	380:10 388:7,7	604:15,16	promised 694:8
621:1 658:7	560:10,11,20	388:16 389:1,5	605:1,2,2,8,12	promote 604:7
695:5 697:16	579:11 603:8	389:10 390:15	606:7 607:14	promoting
704:11 734:12	603:11 696:18	390:16 394:5,8	608:16 609:3	604:13

Henderson Legal Services, Inc.

202-220-4158

www.hendersonlegalservices.com

HIGHLY CONFIDENTIAL

Rust, Marcus - Vol. II

March 6, 2014

33

properly 413:11	public 372:21	641:9 643:9,19	566:18	515:16 516:2,6
property 504:1	538:15 544:3	644:10,13,18	question 380:2	516:14 518:12
proportion	744:1,21	669:14	383:22 384:2	519:1 523:4
422:19	publication	purely 463:14	386:19 388:1,9	524:11 528:6,7
proposal 577:19	402:19 656:11	purportedly	390:18 391:2	528:22 529:1
proposed	Publications	433:7	393:20,21	531:11 532:1
444:15 491:2	583:4	purpose 393:12	394:15 395:20	543:2 550:18
575:12 582:4	published	394:8,17 395:4	401:17 402:5	563:6,14
proposing 443:4	722:16	400:9,14	403:4 404:4	574:13 576:19
443:9 465:4	Pulaski 540:18	401:12 402:1,9	416:10,15	577:14 579:21
493:5 580:10	648:9	444:14 451:13	417:1,21 418:7	580:6 585:19
605:8	pull 483:6 553:4	453:13 454:17	419:8 421:3,12	586:10 587:10
proprietary	553:8	456:2 652:1	423:2,10 426:9	589:1,14
448:3	pullet 405:4	730:20	429:5,17,19,19	591:14 592:10
protect 628:6	pullets 436:1	purposes 495:16	429:21 430:1,4	596:13 598:10
protected 562:5	punished	pushing 463:21	430:9,13	600:14 603:5
562:12 564:8	431:13	625:15	434:11 437:4	604:9,10
615:21,22	purchase 446:4	put 442:22	437:13,20	606:14 615:18
616:2 714:14	488:18 496:9	443:1 456:13	441:22 442:3	620:12 624:18
714:16 715:22	496:19 498:9	471:13,13,16	444:6 446:10	633:6,18
716:8,17 718:2	499:12 563:3	487:3 511:9	446:17 447:16	634:18 643:13
protection	563:19 564:1	513:14 528:16	449:13 451:8	643:21 644:7
556:16,16	566:14 637:22	699:9 727:10	452:8,10 454:5	673:15 674:1
688:18	638:1,3,5,7,8	736:19	454:6 457:10	675:11 677:9
protective	638:16 639:3,9	puts 707:8	461:10 464:7	678:12 679:18
447:19,21	639:20 640:7	putting 560:8	466:16 468:7	681:9,17 684:1
553:21 558:15	641:7 642:1,6	PVP 612:15	470:7,12,16,17	684:12 694:4
741:7	642:9 669:6	616:22 622:12	472:21 474:2	696:10 702:6,8
prove 634:5	693:18		475:10 478:11	703:9,17,18
provide 557:6	purchased	Q	482:4,6,7,20	704:18 705:7
575:3 611:20	467:15 501:3	QC 539:18	483:3,9,11	706:3 709:6,9
631:21	501:11 548:11	qualification	484:16,21	709:17 710:21
provided 433:11	649:12 650:9	686:11 688:4	485:9,14,15	711:1 714:22
556:15 572:11	650:22 651:2,6	qualified 380:13	489:19 493:10	717:5 720:2,20
577:21 581:1	651:17 652:18	384:17 389:4	495:3,19 496:5	720:20 721:16
689:5 737:8	653:4,12,21	410:20	496:12,22	728:21 731:7
providers	654:7 655:20	qualify 384:18	497:3,11,14	735:15 738:9
507:10	669:2	478:7 588:9	498:12 501:16	739:5,16,16
providing 622:7	purchases 643:2	quality 631:21	501:18 502:21	questioning
623:20 624:8	purchasing	631:21 706:15	506:8 508:11	693:22 698:8,8
665:15 703:5	488:17 495:15	707:1,7,11	512:17,22	698:14 736:7
705:21 714:5	498:3 639:15	quantities	513:1,3,5	questions 447:9

Henderson Legal Services, Inc.

202-220-4158

www.hendersonlegalservices.com

HIGHLY CONFIDENTIAL

Rust, Marcus - Vol. II

March 6, 2014

34

514:4 546:3	688:12	572:8	482:9 483:14	704:20 705:11
550:13 611:17	radical 513:19	RAUPDATE	483:16 485:17	705:12 707:17
636:20 637:5	672:14 674:17	376:12,18,19	488:6,8 491:17	716:13 717:7,8
646:22 647:3	RAFK 377:4	376:20,21	491:19 492:20	718:11 720:1,4
666:20 667:22	526:13	377:8,12,14,15	494:20 495:20	720:20,22
668:7 670:21	RAFKS 377:5,6	377:17 414:11	495:22 497:13	730:10 732:6,9
672:13 685:12	529:13 531:10	492:7 494:6	497:15 498:13	732:14,15
693:12 695:10	raise 428:22	503:8 506:3	498:15,21	733:6,9,16
696:5 697:21	510:5 592:1	545:16 573:21	501:17,19	738:21,22
698:2,15,22	593:5,9	586:20 595:10	506:9 507:3	743:3
699:19 706:4	raised 449:5	613:12 678:21	518:11,22	reading 398:1
713:9 714:2	510:6 577:9,18	682:12	519:2 527:9,13	414:15 429:6
721:5 729:16	579:15,16	reach 409:7	529:1,4,17	430:10 431:16
730:2 734:4,8	580:17	411:6,9,16	532:13 533:6	437:11,17
740:13,19,22	raises 507:7	reaching 611:1	534:4 535:16	442:1 467:5
743:11,16	510:4	read 384:1,3,6	538:6 542:3	469:8 520:15
quick 493:19	raising 408:12	386:20,21	545:21 546:5	522:16 527:14
582:11 644:5	581:9 593:15	387:22 388:3	548:3 556:13	527:17 530:1
668:1,4 678:15	ran 479:19	392:2 394:19	556:14,19	531:21 565:2
quicker 461:21	Ranch 374:15	395:22 396:1	557:9,14	580:11 595:14
quite 479:17	random 443:13	397:19 404:5,7	563:13,16	634:6 673:16
652:15 658:12	444:14,15,20	407:4 409:8	568:4,7 569:20	707:17 717:19
725:15	444:22 445:6,9	416:18,20	575:8 577:11	718:16 719:21
quote 583:22,22	445:18	418:1,3 419:8	578:15 579:2	reads 569:22
584:14,14,20	Randon 570:22	419:10,20	580:7 583:22	579:3 611:22
584:21,22	581:22 582:3,6	421:3,5,10,13	586:5 587:11	ready 495:1
585:2,3,6,7	637:17 664:3,9	422:6 423:2,4	587:12 589:14	512:1,9 670:20
586:4,5	range 392:7	423:7 424:16	589:15 591:14	678:12,14
quoted 522:11	403:3 406:10	424:17 425:19	591:16 598:8,9	727:1 740:17
quotes 584:19	414:11 428:2	425:21 426:8	611:21 614:15	real 433:21
R	428:21 431:12	426:11 427:14	616:17 617:21	realize 596:11
R 374:1 378:1	438:8 449:10	429:4 430:3,4	619:21 620:12	really 435:14,14
RA 376:10,11	465:18 473:7	430:6 431:1,3	620:14 628:2	594:2 621:19
376:13,16,17	476:13 518:4	431:14 435:18	628:20 631:16	625:15
377:18 399:3	529:13 568:12	437:6,7,15,19	632:2,6,19	reason 387:2
403:5 406:10	575:11 621:2	437:21 440:16	633:3,8,12,19	388:19 400:22
427:10 428:3	626:7	444:6,8 450:11	673:19 674:6,9	436:19 457:7
457:22 465:19	ranks 656:14	452:11,12	675:13,16	490:15 504:3
473:7 620:21	rate 712:19	457:11,13,17	681:5 684:2,5	507:12 508:4
620:22 669:22	rates 431:13	461:12,14	697:14 701:12	544:12 553:5
686:5 687:11	667:21	464:8,10 470:6	702:9,10	588:7 594:18
	rattle 533:15	470:9 471:9	703:17 704:2	606:18 623:14

Henderson Legal Services, Inc.

202-220-4158

www.hendersonlegalservices.com

HIGHLY CONFIDENTIAL

Rust, Marcus - Vol. II

March 6, 2014

35

623:19 624:8	666:10	record 378:8,11	709:20 715:9	419:20 425:9
625:14 726:22	receiving 560:4	384:3,6 386:21	717:8 720:4,22	426:21 436:21
reasonings	581:19 609:9	388:3 396:1	737:17 739:1	443:17,18
465:7	609:11 612:2	404:7 416:20	740:6 742:5	445:1 453:12
reasons 463:14	613:6 615:9	418:3 419:10	744:9	507:18 619:20
recall 383:18	recess 448:21	421:5,13 423:4	recorded 743:11	reductions
384:22 389:15	494:1 510:19	425:21 426:11	743:17	393:13 506:22
390:5,19 391:5	559:10 582:15	430:6,10	records 413:13	507:6 508:2,21
406:14 427:21	636:2 667:10	431:20 437:7	472:9 521:7	509:6,18
436:16 450:15	recipes 508:15	437:21 444:8	528:14 650:7	refer 515:22
450:20 454:18	recipient 581:8	448:6,17,19	651:11 654:5	645:22 682:11
465:9 472:8,11	recognize	449:2,3 452:12	722:11 725:11	720:8 721:12
472:15 484:16	515:11,14	457:13,17	725:13,17	reference 445:8
498:20 529:20	recognized	461:14 464:10	Redding 374:7	527:10,12
529:22 539:22	689:4	470:9 482:9	387:1 740:21	569:1 721:14
559:1 561:16	recollect 385:19	483:16 485:13	740:22	referenced
561:19 571:11	387:14 391:1	485:17 493:21	redirect 669:16	609:22 616:9
571:14 575:17	391:13 426:19	494:3 495:22	reduce 393:14	617:17 684:21
575:22 579:17	427:3 433:17	497:15 498:15	394:1 395:16	692:8
580:11,19,22	436:13,14	501:19 510:16	396:11 397:1	referred 462:7
581:5,11 582:1	440:15 446:18	511:5,7 512:13	398:8 405:22	463:9 484:17
582:5,9 597:6	455:19 457:1,5	513:9 515:8	464:2 465:3	692:6
600:4 610:22	515:6 525:13	516:13 517:18	504:6 588:3,20	referring 379:14
612:1,2,3	572:15 578:1	519:2 524:13	659:21 711:20	396:8,22
613:7 615:2,12	595:3 596:10	524:16,18	712:11,20	401:22,22
623:5,7 630:20	623:8 630:9	529:4 538:15	713:4	405:5,12
661:12 663:11	637:13 661:5	554:20 559:8	reduced 405:4	408:10 410:22
663:19 666:9	665:5 692:1	559:12 563:16	451:15 527:5	411:5 415:22
666:13,18	723:3 724:14	565:13 582:13	527:21 528:8	416:3 424:1,7
672:15,20	725:10 726:4	582:18 587:12	528:17 619:18	424:20 436:4
680:18 692:9	recollection	589:15 591:16	744:7	438:18 445:3
692:13,14	484:3,4 491:22	615:16 620:14	reducing 395:15	459:2,7 460:13
694:9 722:8	523:14 572:20	635:22 636:4	396:10,22	460:20 474:4
723:9 725:22	615:8 634:13	650:21 658:17	405:18 436:20	485:3,20
730:4,5	657:15	667:8,12 668:1	440:21 451:16	486:12 487:22
recalls 462:19	recommendat...	669:20 678:22	452:5 453:13	501:5 504:9
receive 477:19	456:18 576:19	681:15 682:1	454:17	507:17 511:13
609:14 643:1	recommendat...	693:16,20	reduction 393:5	514:14,21
664:11 665:3	383:9 439:8	694:9,21 695:9	393:7 398:8	534:7 535:20
received 466:10	recommended	696:3,8 697:15	403:12,20,21	536:20 546:14
469:12 534:13	431:12 433:14	702:10 704:2	405:13 414:21	551:9 578:10
534:17 633:11	446:8	704:20 708:21	415:15 417:16	597:16 600:11

Henderson Legal Services, Inc.

202-220-4158

www.hendersonlegalservices.com

HIGHLY CONFIDENTIAL

Rust, Marcus - Vol. II

March 6, 2014

36

600:18 601:2	728:16	725:12 726:15	596:22	719:15 720:13
602:9 606:3	relayed 590:22	729:8 730:10	represent	requirement
608:19 612:19	released 521:18	730:12	656:17	385:12,14
616:8 640:13	relevant 432:14	reminded	representation	424:2 425:9,15
641:18 646:9	447:17	583:18 584:11	563:12 620:6	426:22 436:22
684:14 727:21	relying 563:11	removal 547:11	693:15	444:2 445:1
refers 459:21	remaining	547:21	representations	455:4,5 459:11
refinery 641:10	541:16	remove 482:22	513:18	459:12 461:8
642:2	remarked 449:8	484:18	representing	464:1 471:1,2
reflect 431:20	remember	removed 481:14	586:2 701:19	471:3,5 475:7
487:17 513:9	382:2 384:8,9	482:1	request 379:21	476:10 477:22
650:22 694:9	384:13 385:3,7	rep 447:22	388:5 392:2	488:17 567:3
reflected 456:7	385:9,20 386:1	478:12	518:14 520:6	605:15 606:20
reflecting 531:3	386:4 398:1	repeat 383:22	609:14 621:10	736:17,19
reflects 402:13	446:13 450:18	386:19 393:20	622:6	737:22
refrain 632:5	463:17 464:16	394:15 395:20	requested 384:4	requirements
refresh 615:7	494:11 497:19	401:16 402:5	384:7 386:22	416:6 417:4,9
refuse 564:1	497:21 501:15	403:4 404:3	388:4 390:9	420:3,8 434:5
refusing 563:3	507:22 519:20	437:4,12 452:8	396:2 404:8	434:14 440:22
regard 435:20	520:19 523:10	457:10 466:16	416:21 418:4	443:18 444:1
regarding	525:11 530:1	482:7 587:10	419:11 421:6	451:15 452:4
431:21 564:14	532:22 560:4	702:8 704:17	421:14 423:5	453:12 454:16
564:21 567:20	565:2 569:8,11	710:22 719:1	425:22 426:12	459:19 468:14
567:21 574:22	569:12 572:1,2	repeatedly	430:7 437:8,22	474:20 475:18
666:3 697:6	572:4,10	625:13 633:15	444:9 452:13	476:1 477:16
718:9,10 738:1	579:14,16	717:3	457:14,18	478:19 486:14
regional 686:20	582:2 585:3,9	rephrase 496:2	461:15 464:11	502:12,17
Registered	587:7,21 588:1	593:17	470:10 482:10	504:6 505:2,16
372:20	588:4 591:13	replace 633:1	483:17 485:18	525:22 526:8
registry 533:18	597:4 600:18	replied 505:7,8	496:1 497:16	560:14 619:18
regular 584:22	601:1,3 602:17	report 410:5	498:16 501:20	697:9 719:15
rejected 580:14	602:21 607:13	463:4 537:7,16	519:3 529:5	720:13
related 580:5	609:9,11	597:22 622:7	563:17 587:13	requires 487:18
595:4 638:20	610:22 612:5	659:18 722:9	589:16 591:17	734:11
666:8 689:12	612:22 617:1,2	722:12 724:16	620:15 630:17	requiring 389:9
690:16 744:11	617:10 629:9	726:10	702:11 704:3	390:6,22 391:6
relations 549:20	629:15 642:4,8	reported 424:22	704:21 717:9	623:21 624:10
relationship	646:3 652:4,12	536:19 537:11	720:5 721:1	rescue 479:19
632:10	660:17 664:7	594:18 656:18	require 501:2	reserve 516:16
relative 629:22	666:14 670:4	reporter 372:20	required 444:2	reserved 520:20
744:14	691:17 713:18	398:16 668:3	606:7 637:22	resolution
relax 728:10,15	714:2 721:13	reporting 587:8	693:19 701:2	628:17

Henderson Legal Services, Inc.

202-220-4158

www.hendersonlegalservices.com

HIGHLY CONFIDENTIAL

Rust, Marcus - Vol. II

March 6, 2014

37

resolve 448:5 676:16	464:6 489:19 493:10 495:18	543:16 554:15 559:15,18	434:7 435:10 436:6,17,18	528:10 530:21 532:21 533:9
resolved 449:7	496:13 498:11	575:2,5 595:13	439:2,14,21	539:3 540:22
respect 403:19 425:5 445:17 475:5,8,22 478:13 530:21 556:22 575:3 600:12 637:15 637:21 658:22 662:6 664:8 665:1,14 695:2 695:3 696:7 699:9 724:1,17 727:15,16 729:3,12	513:7 580:6 restaurant 627:11 Restaurants 626:15 627:8 630:2 restraint 665:16 731:5 restraints 578:13 731:17 restrict 395:5 restriction 450:14 457:9 461:7 578:20 732:2 733:2 result 416:8 426:22 434:1,4 434:13 473:4 505:4 506:20 526:7 541:8 688:21 693:22 720:11 resulted 393:4 509:19 692:5 resulting 403:22 results 465:21 472:19 473:4 retail 623:16 624:5 retailers 623:19 624:7 retains 689:6 retreat 507:5 509:3 retreats 510:3 reverse 681:6 review 389:22 390:1,4 406:12 427:12 487:10	628:22 695:9 reviewing 389:15 390:20 391:5 494:11 519:20 559:1 569:9 580:3 629:9 630:20 revolutionary 628:13 Rice 467:4,8,9 rich 542:6 671:9 671:15 Richard 583:3 rifle 723:20 rigged 485:1 right 379:12 383:14 385:7 385:17,20 386:8,14 387:8 388:18 392:16 393:2,16 394:9 395:18 396:19 398:4 399:8,11 399:13 400:2 400:10,10,15 400:17 401:8 402:16,20 403:3 406:19 406:22 407:21 407:22 408:1 408:15 413:19 414:4 415:7,11 415:12,16 420:11,14 422:3 423:21 424:10 425:3 426:6 428:3,5 429:7 432:11 433:6,8,13	440:2,11 441:8 441:13,18 442:6,10,11,16 442:22 443:5 443:11,14,20 444:19 445:10 445:20 446:19 451:3,13 453:2 453:6 454:13 455:12 463:2,8 464:18,20,22 465:5,10,12 466:3 467:4,16 467:18,20 469:5,22 471:5 471:17,18,19 471:22 472:4 473:16 474:7 474:15,18 477:2 479:2,5 479:13 480:7 481:1,22 482:2 486:10,16 488:18,20 489:5,13,17 490:6,10,17 491:2,7,10,22 492:2,9,12,15 493:2,6,16 496:17 499:6 500:9,22 501:4 501:6,12 502:13 503:19 504:22 505:6 506:4,18 507:1 509:4 510:13 516:17 522:2 523:16 524:5 525:15 526:11	541:22 544:18 545:20 546:6 546:18,21 547:5,14 549:1 551:10,11,15 553:1 555:10 555:12 558:7 558:10 560:3 560:16 561:4 563:4 565:22 566:3,6,20 567:22 569:8 569:13 570:3 571:1 573:15 574:2,4,16,18 576:3,11,15,21 577:6,8,13 578:6,10 580:14 581:2 581:13 583:7 584:4 585:7,21 590:17 592:2,6 592:13,16 593:5,12,19,20 594:8,12 595:1 596:9,20 597:2 597:9,22 598:13,17,20 599:2,6,20 601:8,16,19 602:11 603:19 605:15 606:5 607:4,12,14,19 608:5,8,9 609:3,20 611:5 613:16,20 614:8,13,16 616:10 621:8 621:13,14,17
respond 545:1 601:21 611:15 612:4 responded 736:15,17 responds 603:14 608:13 response 591:6 627:19 672:13 responsibilities 420:13 responsibility 412:12,13 414:3 responsible 399:20 413:4 413:18 415:10 420:18 421:20 425:13 433:7 701:8 responsive 484:14 675:11 703:19 rest 488:6 551:4 551:18 restate 417:1				

Henderson Legal Services, Inc.

202-220-4158

www.hendersonlegalservices.com

HIGHLY CONFIDENTIAL

Rust, Marcus - Vol. II

March 6, 2014

38

621:22 623:7	589:10 626:2	433:18 434:4	674:18 677:11	534:2 637:22
630:17 635:9	672:14 674:17	434:12 435:1	677:19 700:14	running 411:13
635:10 637:9	674:21 721:19	438:12 449:4	702:16 706:20	432:12 582:2
637:11 638:22	rise 393:7	454:20 459:18	707:21 721:10	Rust 372:15
645:6 646:6,10	risk 542:10,14	460:11 461:7	734:5 736:14	378:4 379:1,7
646:13,17,20	565:6 680:15	466:22 467:8	736:17,18	392:8,11 394:6
647:18,21	680:19 681:11	467:20,21	737:8,22	399:4 406:6
648:2,13 649:4	risks 565:6	468:2,13 477:1	739:11 740:8	414:6 415:7,9
649:20 650:1	road 373:7	478:8,14	roughly 655:11	427:6 438:6
650:11,18	694:5 695:12	480:21 481:10	rows 473:13	440:13 449:9
651:7,18 653:8	rodent 535:19	486:3,15 492:9	536:8	449:16 457:20
653:13,22	535:21 536:4	499:15 513:22	rub 408:18	465:15,18
654:3,8,15	536:21 537:1,4	517:16 521:16	411:17	492:3 494:8
655:2 657:4	538:3,10	522:3 523:1,18	rudely 737:21	503:8,9 505:21
658:22 659:2,6	rodents 536:8	523:20 525:22	rule 385:8	514:5,9 517:21
659:11 660:3	Roger 560:5,21	526:6 532:14	487:21 488:1,5	519:7 520:13
660:17,22	561:5 581:19	533:9 538:9	488:12,21	524:22 526:14
662:7 663:1	581:21 685:3	541:14 544:4	489:3,6,15,21	527:3 529:9,13
672:7 675:7,8	685:15	553:12 556:21	490:4 491:2,6	531:6 543:7
675:16 676:2,8	role 631:9	571:19 574:6	491:8 493:1,11	545:12,16
682:10 685:17	699:18	574:21 575:7	493:14,16	550:19 552:16
687:9 690:10	rolled 706:4	575:13 578:10	494:19 495:8	553:20 554:12
696:10 697:2	Ron 621:10	583:10 614:7	495:13 496:6	557:20 558:19
699:2,6 700:11	622:6	615:4,10	496:16 497:9	558:19 570:6
702:21 706:9	room 418:9	618:11 619:12	500:15 501:10	573:17 582:19
706:18 707:4,8	422:17 554:15	619:16,18	502:6 535:13	586:16 595:1,6
707:12,16	root 550:8	620:7 621:1	574:16 576:14	598:2 612:8
708:1 709:2	rose 373:11	630:7 633:11	576:21 580:5	613:8 620:17
710:4 711:7	375:3 378:16	636:12,20	580:10 588:19	626:3 629:3
712:2,17,22	378:21 379:18	637:1,11,22	596:20 602:11	636:7 645:9
713:13,18,20	380:4,18	639:7 643:11	605:9 606:5	667:16 668:12
714:6,20 715:3	387:17 388:15	644:17 646:3	608:7 730:15	669:16 670:2,3
716:11 717:22	389:17 391:7	647:16 648:1,8	731:3,9,13	671:2 672:9
719:6,9 722:3	391:21 399:11	648:15,21	rules 521:4	674:15 676:6
726:15 731:5	403:2,5 407:2	649:6,12 651:5	605:4	677:8 678:18
731:13,20	411:20 415:10	651:16 652:13	rumor 587:2,8	679:6 680:3
736:9 739:19	421:21 425:4	653:11,20	590:19 592:18	683:21 685:10
right-hand	425:14 426:17	654:6,13	594:4 597:19	685:22 689:7
403:6 674:4	426:20 427:11	660:20,22	600:1,5,15,21	690:14 691:2
righters 420:21	430:16,19	661:3,9 667:14	601:14	692:7 693:3,6
rights 503:22	431:11,22	668:15,17	rumors 383:11	696:17 697:4
513:15,19	432:2 433:11	669:2 672:15	run 409:5,5	697:20 698:7

Henderson Legal Services, Inc.

202-220-4158

www.hendersonlegalservices.com

HIGHLY CONFIDENTIAL

Rust, Marcus - Vol. II

March 6, 2014

39

734:7 736:6,14	saying 382:5	467:3,8 468:21	609:5,13	433:15 451:20
737:20 738:12	398:6 411:4	469:2,4,6,9,15	611:11 612:7	455:17 456:4
739:14 740:14	433:2 472:18	469:16,19,19	616:6,19	456:19
740:20 741:6	498:1 499:1	469:22 471:8	618:16 621:4	scientifically
741:17,22	504:22 505:14	473:13 474:11	621:10 622:14	675:9,17 676:3
S	507:15,20	474:17 475:19	623:14 624:4	scope 647:5
S 374:1 376:8	509:2,4 511:18	477:4,9 479:3	626:21 627:18	693:12,14,15
378:1	522:12 593:3	481:13,20	627:22 628:11	694:6 695:4,8
sabotaged 726:2	594:15 600:6	486:4,18	628:21 629:16	695:11
sail 479:11	600:16 608:22	487:16 491:13	629:20,21	score 491:15
480:10,11	609:2 640:18	491:14,20	631:8,17 632:9	scores 400:9
sailboat 479:20	703:20 705:2,4	492:17 498:22	633:4,20	scrawnier
480:3,10,12	734:18	498:22 499:7	636:16,17	431:14
sailing 479:22	says 396:14,19	499:10 503:17	639:19 640:21	screwed 419:5
sale 507:11	398:15,18	505:7 506:14	643:8 644:10	scrutiny 578:15
sales 503:15	400:1 401:15	510:1 521:14	647:7,9 656:14	731:19
506:22 507:6	401:21 403:12	523:17 525:18	656:15 657:1	scuttle 596:1
508:3 585:13	404:10,21	527:4,21 528:7	657:20 659:16	se 435:14 533:20
625:2,4,7	405:2,11,15	529:2 530:6	671:8 675:6	535:13 542:15
631:1,2	406:4 408:6	532:14,21	677:15 680:13	Seattle 487:17
salmonella	409:4 410:3,12	533:3,20 534:1	684:6 688:17	second 405:16
533:21 534:1	411:5 414:19	535:18 541:22	691:10,15	407:8 443:13
542:15	415:5 419:18	547:19 548:9	701:3,21,22	449:9 450:1
sanctioned	419:22 421:18	553:6 555:17	702:4 706:13	462:11 491:13
669:13	421:22 423:14	556:7 557:3	707:4,5,16,18	524:8 541:13
sand 589:10	423:14 424:9	561:11,12	716:7,9,13,14	553:4,9 562:14
sat 446:14	424:17,18	562:3,11,14	716:16 717:19	567:17 612:6,8
546:10 633:8	426:15 429:7,7	564:13,21	717:20 718:1,7	619:15,16
633:12 634:1	429:8 431:5	566:11,21	718:18 719:2,3	632:9 646:1
635:4,9	435:20 438:2	567:9,13,18	719:21 730:9	670:16,17
Satkin 372:19	438:21,22	568:1 569:18	730:19 731:21	671:7 678:19
744:2,20	439:4,7 440:2	570:4 574:19	732:15,22	678:20 679:8
saw 390:8 407:6	441:19 442:1	576:5,12	733:14,16	679:12 680:3,9
410:6,9 411:11	445:12,13,19	583:16 584:8	schedule 463:12	686:19 687:13
412:8,21	445:21 446:3	585:21 586:14	463:14 576:9	687:20 688:8
417:16 425:3	450:8,17	590:18 593:11	scheduled	688:16 691:5,6
440:6 480:9	452:20,21	593:13,20	711:20	732:13 738:17
486:9 516:3,4	453:3,7 458:10	594:3 596:1	Schimpf 691:11	seconded 691:11
516:9 536:16	458:14 460:1	599:21 600:1	science 610:5,19	secondly 578:18
537:18 629:2	461:2 462:21	600:15 601:20	628:5	732:18,22
637:8 657:18	463:2,7 466:12	603:14 607:12	scientific 432:8	733:15
	466:17,22	607:13 608:14	432:19 433:4,6	section 569:17

Henderson Legal Services, Inc.

202-220-4158

www.hendersonlegalservices.com

HIGHLY CONFIDENTIAL

Rust, Marcus - Vol. II

March 6, 2014

40

680:6 697:5,9 697:12 security 727:10 see 392:12,13,22 393:10 400:5 403:16 404:16 404:22 405:2 405:10,11,19 408:8 409:2,11 409:16 411:11 413:13 423:15 423:17 428:8 428:14 430:9 430:14 436:2 439:5,10,18 440:3 446:5 447:4 458:12 460:9 461:5 463:15 469:6 469:15 471:10 473:12,14,18 474:7,11 481:14 483:22 484:9 486:6,18 487:10 499:13 503:12 504:1 506:12 511:15 511:16,19,21 521:22 525:9 525:19 527:10 528:2,3 530:9 532:17 538:19 541:16 542:5 542:10 545:10 545:10,11 546:12 547:12 548:1,13 550:20 551:7 553:3 561:14 562:5,12,16 564:22 565:10 565:11,16,19	566:15 567:11 567:15 568:11 568:21 569:1,2 569:15 573:11 579:12 583:13 584:15 587:5 590:18 594:14 596:6,14 597:9 599:7 600:9 602:2 610:7,13 612:17 614:11 622:12 624:12 627:20 628:8 632:12 639:22 641:1 645:15 651:12 656:19 657:10 663:5 665:12 666:5 671:10,15,20 672:1 675:5,6 675:7,18 680:6 680:15 684:9 686:12 687:1 691:8 706:16 714:13,14,15 714:15 716:6,7 718:5 725:11 725:11 732:17 738:20 seeing 427:22 561:16 724:14 seeking 385:3 seen 454:1 456:17 480:8 507:19 518:6 520:13 522:18 522:20 524:2 536:15 537:15 558:18 561:7 581:5 585:1 612:14 633:9 633:17 658:11	714:1 select 609:13 self-driven 628:19 sell 490:20 541:4 552:7,9 566:14 576:7 602:7 660:5 seller 704:6 selling 540:8 541:1 552:2 642:16 713:3 sells 508:17 576:6 send 611:14 senior 629:18 635:14 sensitive 530:15 sent 391:17 411:22 432:4 432:18,22 433:3 438:12 454:2 561:6 616:16 621:6 629:1 684:15 sentence 491:13 499:5,7 506:16 529:15 530:3,6 547:8,16 578:8 587:2 618:15 633:19,19 634:7 671:8 675:5 684:3 686:19 687:5 688:16 697:12 697:14 719:7 sentences 733:15 separate 521:18 522:5,13 602:1 604:2 September	414:13 438:11 438:20,22 443:3 480:22 627:20 634:2 677:3,10 series 682:20 served 636:8 722:19,22 serves 730:20 services 638:7 639:20,21 641:8 642:10 642:17 serving 635:12 722:18 SES 592:22 593:2 594:9,11 629:17 631:9 631:11,13 632:5,6,15 634:11 session 511:1 713:10 set 408:18 411:12,15,18 439:14 468:14 491:15 538:8 539:6,16 548:1 567:14 608:3 638:12 640:8 sets 605:4 setting 601:7 seven 474:14 Seymour 638:14 639:17 SF 736:1 share 611:19 665:10 693:9 shared 593:22 715:16 sheet 491:15 536:10,14,18	743:14 shell 492:19 506:14,15,19 507:4,7,10,16 508:6,16 509:1 509:2,5,20 510:4 547:11 547:21 556:18 576:6,8,10 577:3 583:21 584:14 586:2,3 628:12,19 689:17 692:8 692:11,14 693:18 697:6 700:20 701:3 702:17 708:13 733:19 734:11 736:16 738:1 shield 614:11 616:14 618:19 ship 539:19 661:19 shipped 541:22 shipping 661:20 shit 728:9,14 shocked 627:19 shoot 420:22 shore 479:13,16 480:6 short 524:11 698:16,17 shorten 423:7 shorter 393:21 shortly 401:8 shot 521:17 522:4,13,19,21 523:2,11 723:20 shotgunning 418:19 shots 724:22
--	--	---	---	--

Henderson Legal Services, Inc.

202-220-4158

www.hendersonlegalservices.com

HIGHLY CONFIDENTIAL

Rust, Marcus - Vol. II

March 6, 2014

41

shoulder 550:8	732:5 733:5	391:18 394:14	543:4 546:15	522:4,12,18,20
show 390:5	shut 539:12	394:20 395:6	547:3 548:5	523:2,11,19
391:14 398:22	605:21	396:7,12	549:11 553:15	537:12,13
399:2 402:17	sick 542:1	398:16 399:21	559:16 561:20	577:6 671:11
403:14 406:9	sicker 431:14	400:21 404:1	563:15 571:7	size 393:5
414:9 427:9	side 520:5 587:2	405:6,13 406:2	586:21 590:7	395:15 396:10
434:17 438:4	590:18 592:17	406:16 410:10	606:12,18	396:22 464:2
446:21 447:7	594:3 603:8	410:22 412:5	607:11 608:1	465:3 711:20
447:13 449:19	672:7 674:4	412:19 413:16	609:10 612:20	713:4
462:6 465:17	676:11 723:16	417:7,13,18	613:14,17,18	sizes 475:2
470:19 472:9	724:3,4	419:18 420:4,8	614:22 615:8	508:18
487:7 492:6	Siegel 373:6	420:17,19	617:4,12 620:2	skeptical 383:1
494:5 500:13	378:12	421:2,21 424:4	622:3,16,22	skinny 418:9,14
503:5 506:2	sign 386:6	424:14 427:2	624:16 625:1	418:22 419:4,4
519:10,18	548:20 553:20	429:17 432:4	625:13 626:6	420:16 422:9
524:20 526:12	554:12,18	432:14 434:15	634:1 635:5	422:11 424:12
528:14 529:12	558:6,19	437:1,15	647:8 650:16	slash 469:13
531:9 543:10	642:21 741:7	438:13 441:21	693:21 701:7	471:9,14,16
545:15 548:5	Signature 742:7	445:8 451:17	701:15 702:7	slight 576:14,20
552:19 558:1	743:22	452:6,18	702:15 705:6	slowly 429:13
559:4 570:9	signed 379:19	453:14,20	709:15 710:19	so-called 383:9
573:20 582:22	380:5,9,18	456:6,17,20	712:5,9,13,22	587:4 590:21
586:19 595:9	381:8,15 387:4	457:9 459:4,20	713:6 715:12	592:20 594:5
598:5 609:7	548:15 573:16	461:8 469:18	717:5,18	Social 651:17
613:11 620:20	575:12 660:16	470:6,21 472:1	718:12,20	Society 514:10
626:6,11 629:6	significant	473:20,22	719:16 720:14	515:3,19 516:9
645:22 650:8	516:14 574:6	474:20 475:15	720:21 721:8	517:1 721:6
692:2 696:9	603:4,8 645:18	476:12 477:17	723:6 724:10	sold 385:15
701:22 704:11	680:15,19	480:4 482:20	725:5,14,21	540:15,21
736:4	681:11 698:7	483:1,8 485:22	726:6 727:15	576:10 577:4
showed 380:22	significantly	487:8 488:12	729:17 730:1	solution 712:10
514:21 516:22	603:11	495:16 496:10	730:17,22	712:18 713:2
560:1 661:8	similar 616:16	496:20 500:2	731:2,5 733:20	731:10,12
663:8 666:7	simpler 705:18	504:7 505:4	740:9	solutions 710:3
showing 408:7	simply 529:19	506:5 507:19	sit 633:18	711:6,10,13
428:12	620:8	508:6 509:1,8	site 538:4 544:3	738:18,21
shown 512:14	simultaneous	509:21 516:6	sitting 572:5,9	739:3,9,12
513:21 554:14	380:11	516:12 517:1	situation 517:15	somebody 484:7
666:17	sincerely 470:1	518:2 521:9	602:13 708:6	563:2
shows 599:3	single 570:1	524:10 528:12	six 413:14,14	someplace 385:9
696:9	sir 381:4,8 388:2	528:15,21	491:13,14	389:20 573:4
shrinks 579:1	388:9 389:21	531:21 538:14	504:21 521:17	622:20 642:2

Henderson Legal Services, Inc.

202-220-4158

www.hendersonlegalservices.com

HIGHLY CONFIDENTIAL

Rust, Marcus - Vol. II

March 6, 2014

42

708:21 729:6	592:5,18 594:4	specification	393:9 395:14	430:18 461:10
Somewhat	594:9,11,19	390:6 640:19	474:7	507:4 517:18
510:11	595:1 598:17	693:18 696:19	squeeze 590:2	521:4 538:2
soon 611:18	600:2,2,6,16	696:20 697:5	605:16 607:5	546:7 547:9
sorry 462:1	601:1 605:8	704:7 736:15	squeezed 604:5	605:5,5 617:20
519:11 523:7	606:18 609:18	specifications	stack 461:22	619:14 644:6
526:10 568:12	610:10,17	389:2,3,9	667:1	665:15 666:4
568:13,14	611:4 612:19	699:12 700:7	staff 435:15	stated 484:6,6
643:17 664:20	613:1 616:21	700:14 701:1	staged 513:14	508:3 509:11
676:19 678:7	617:3,5,9	703:4,6,13	Stahl 374:17	528:17 551:14
682:17 685:17	619:2 622:16	704:13 705:20	stamped 629:7	556:7 592:10
687:16 688:11	623:2,7	705:22 706:14	standard 433:17	693:16,20
693:9 697:22	Sparboe's 590:5	706:22 707:6	433:19 536:5	694:14
741:15	speak 640:4	707:10 737:8	579:10 607:7	statement 396:4
sought 491:5	speaking 704:1	specified 705:3	608:3	421:18 423:16
sound 512:4,6	715:7	specifies 647:2	standards	423:18,20
512:10 525:15	speaks 445:12	specifying	433:14 458:11	452:9 484:5
Sounds 741:1	470:12 633:7	389:17	608:3	523:1 528:4,10
source 518:9	633:13,17	specs 738:3	standpoint	528:13 565:16
sources 668:14	707:14 718:22	speculation	661:3	620:1 694:3
South 374:18	732:10 733:10	397:10 412:7	start 508:10	717:15 718:3
space 393:13	spec 734:10,21	464:5 523:4	532:7 547:4	719:21
403:12 436:22	735:4 738:1	669:9 705:1	568:17 570:17	statements
440:21 443:14	740:1	736:22 737:10	579:22 584:2	634:12 635:16
443:16 444:2,4	special 677:1	738:5	624:3 652:22	states 391:19
444:16 445:9	specialty 700:20	speculative	659:13 675:5	392:20 393:2
445:20 452:4	701:2	706:3	694:11,16	407:8 420:10
453:11 454:16	specific 382:11	speech 739:6	698:6	424:14 499:4
463:13 464:1	390:18 445:9	speed 463:12	start-up 573:2	538:21 540:22
465:2 474:6,20	546:2 572:5	speeding 465:2	started 422:15	542:22 564:6
475:7,17 476:1	612:4 633:18	spelled 646:9	422:21 450:13	591:4 619:16
476:10 491:16	664:7	spent 711:19	516:22 540:19	631:19 637:2
502:12,17	specifically	spies 596:3	544:22 551:17	661:21 675:16
505:2,16 527:7	382:3,8 383:18	597:17	698:14	685:5 686:20
528:1,9,18	384:13 407:22	spoken 740:10	starting 428:8	708:13 715:3,5
567:3 605:17	415:21 506:21	sponsors 630:11	430:15 450:5	stating 476:10
719:15 720:13	572:10 602:22	spray 723:16	603:16 646:5	510:2 611:16
span 497:4	603:1 609:22	724:1	starts 428:3	632:5 715:10
Sparboe 533:13	610:9 624:14	spread 585:10	435:12 463:5	station 642:20
535:14 541:15	630:16 684:19	spring 632:14	521:14 550:20	status 526:6
587:3,19 589:6	706:20 707:1	spurious 734:19	578:9	541:9 632:18
590:8,20 591:8	721:11	square 374:9	state 378:7	688:21 689:6

Henderson Legal Services, Inc.

202-220-4158

www.hendersonlegalservices.com

HIGHLY CONFIDENTIAL

Rust, Marcus - Vol. II

March 6, 2014

43

statutes 665:15	study 428:16	453:9,17 454:9	521:8 522:9,17	634:20 635:3
stay 603:14	429:10 430:20	456:16 457:2	523:6 524:4,19	635:20 636:5
605:20	Stueve 373:4,6	457:11,22	525:2 526:16	640:14,20
stayed 394:21	376:2,4,6	458:7 459:8	526:22 529:11	643:16,20
401:3	378:9,12,12	460:22 461:12	531:8,19 532:4	644:8 645:5,10
stenotype 744:7	379:6 380:12	461:18 462:1,5	532:9 535:9	647:6 650:15
step 393:4,8	380:16 384:1	462:14,16	537:20,22	652:5,11
395:13 504:18	384:12 386:7	463:1 464:8,15	543:9,19 544:2	658:10 662:14
sticking 520:10	386:20 387:7	465:17 466:2	544:8,11,17,22	664:18,22
stipulate 423:7	387:22 388:8	467:6 468:12	545:14 546:1	665:21 666:19
stipulation	391:11 392:4	470:15 472:16	549:10 550:4	666:21 667:2,6
676:17 734:20	392:15 395:11	473:2,11 474:5	550:10,14,17	668:19 669:8
734:22 735:12	395:22 396:6	474:10 475:11	551:20 552:18	669:17 670:4
735:17,21	397:6,14,22	475:14 476:6	553:10,15,18	670:12,18,22
stock 428:13	398:13,22	480:16,20	554:2,5,7	671:2 672:17
stop 455:12	399:6 401:18	482:5,8,19	555:7,9 557:22	673:11,13,16
462:11 485:5,7	402:7 404:5,12	483:7,14 484:2	558:22 559:13	673:21 675:10
498:3 695:13	406:8 412:11	484:11,15	563:13,20	676:7,19,22
715:7	413:1 414:1,8	485:4,21 487:6	565:15 567:8	677:4,6 678:13
stopped 461:3	415:20 416:4	487:15 492:5	568:16,20	679:17 680:20
472:5 727:17	416:22 419:6	493:18 494:4	570:8 573:9,19	681:14,21
store 504:15	419:17 421:2,9	494:10 495:20	577:17 582:10	682:17 683:1,8
626:15 627:8	421:17 422:22	496:2,4,14	582:21 586:11	683:10,15,18
638:13	423:6,9,11	497:2,6,13,18	586:18 587:11	683:22 684:1
Street 372:18	424:8 425:18	498:13 499:2	587:17 588:17	684:11 685:16
373:15	426:8,16 427:8	500:6,12	589:4 590:6,14	685:20 687:22
Streets 374:10	427:18 428:1	501:17 502:3	591:14,21	688:9 689:19
strength 579:9	429:3,16 430:2	502:10 503:4	592:11 593:10	689:22 690:3,6
stress 431:9	430:11 432:3	503:11 505:11	594:7,17 595:8	690:9,15 691:7
628:13	432:17 433:1	506:1 507:14	597:15 598:4	692:3 693:8,11
strict 557:7	436:9 437:6,14	509:12 510:8	606:11,17	693:16,21
strike 419:6	437:19 438:3,8	510:12 511:6,8	607:10 608:12	694:2,11,16,22
422:22 425:18	438:15 440:5	511:17,22	608:20 609:6	695:7,22 696:4
429:3 431:20	440:17 441:4	512:7,14,16,21	610:15 611:9	696:12,15
444:5 484:11	441:10 444:5	513:4 514:3,7	613:10 615:17	698:1,5,12,18
519:5 537:20	444:13 445:7	515:1,7,15	616:5 618:4,8	699:11 700:18
703:15	445:16 446:12	516:12 517:3	619:6 620:19	701:19 702:5,9
string 505:12	446:20 447:8	517:14 518:1	622:21 624:2	702:14 703:15
strongest 623:18	447:15,20	518:11,15,19	624:21 625:12	703:22 704:9
624:6	448:5,12,16	518:22 519:9	626:5,10,18	704:19 705:5
struck 736:6,11	449:3,18 452:1	519:16,17	627:6 629:5	705:11,16
Stuart 649:7,7,9	452:11,16	520:2,12,19	633:22 634:8	706:7 707:15

Henderson Legal Services, Inc.

202-220-4158

www.hendersonlegalservices.com

HIGHLY CONFIDENTIAL

Rust, Marcus - Vol. II

March 6, 2014

44

708:11 709:1,7 709:10,14 710:7 711:2,11 711:17 712:16 713:12 714:11 714:12 715:2,6 715:9,11 716:5 716:15,22 717:4,7,12 718:17 719:5 720:1,9,18 721:3,22 724:15 726:9 728:20 729:1 729:11,14,20 729:22 731:1 731:11 732:12 733:13 734:3 734:15,20 735:1,8,14,18 735:22 736:8 736:21 737:4 737:13,16 738:4,16 739:4 739:15,19,21 740:2,12 741:15 742:2 Stueve's 667:20 672:13 721:16 stuff 381:12 382:6 384:11 386:6 429:1 572:15 727:12 stupid 431:17 style 566:12 subject 438:18 485:15 487:10 513:17 587:2 590:19 592:17 594:3 599:1 614:10 647:4 664:19 665:2	685:5 695:17 695:19 submitted 708:5 submitting 702:16 substantial 597:21 657:3 709:2,3 733:18 substation 725:3 sudden 605:3 sued 540:20 suffered 688:20 sufficient 551:22 suggest 444:19 444:22 681:7 suggested 731:10 Suggesting 633:2 suggestion 499:1 711:22 712:3 suggestions 566:19 suing 697:1 699:21 728:12 Suite 373:7,16 374:18 summaries 659:10 summary 685:6 685:7 summer 504:11 504:14 summertime 470:2 Summit 561:22 supermarket 704:6 supervision	585:16 supplier 389:4 539:8 701:14 702:17 704:7 suppliers 623:21 624:10 624:11 708:8 supplies 405:5 405:18 supply 383:9 393:14 394:1 394:18,22 395:5,16 396:11 397:1 398:8 400:14 401:4,12 402:2 402:10 403:21 405:13,22 436:21 439:21 440:3,10,12 443:17 451:16 452:5 453:13 454:17 456:2 457:8 461:6 504:6 506:20 564:21 566:3 567:11 571:5 586:3 588:3,20 640:17 703:13 703:14 supplying 552:1 support 551:5 supporter 623:18 624:7 supportive 600:6,17,22 601:15 supposed 483:6 512:2 supposedly 523:21 590:16 603:22	sure 394:21 401:3,19 408:14,20 411:12 416:2 424:6 427:3 434:2 441:2 445:14 451:14 452:3 453:11 457:15 459:14 459:16,21 460:13 462:14 474:3 475:8 477:13 478:11 482:13 483:20 486:11 488:2,7 493:20 514:16 520:22 527:9 540:2 544:12 549:18 550:16 564:11 566:16 572:3 577:12 592:9 613:3 621:15 622:18 624:20 629:2 641:20 643:4 653:6 658:12 667:2 705:3 720:7 725:16 726:14 729:6 732:19 740:6 741:13 surplus 546:9 547:11,21 661:18,22 713:3 surprise 703:3 704:5,14 705:21 suspitions 382:16 394:10 394:12 400:12 Sweetnam	679:14 sworn 379:3 735:18 744:5 system 478:4 486:15 491:15 515:12,22 516:1,4 628:18 systems 588:9 <hr/> T T 376:1,8 table 552:14 656:17 676:11 tag 687:15 take 409:14 422:12,15,18 448:7 456:11 493:18 524:11 532:10 536:7 553:8 582:10 612:16 613:1 616:7,13 620:11 635:20 658:19 670:17 670:19 672:6 673:7 676:5 681:1 723:22 728:17 taken 448:21 468:18 469:3 469:10,20 470:18 471:4 478:22 494:1 510:19 523:21 539:8 559:10 582:15 636:2 658:18 667:10 744:3,6,13 takes 710:8 talk 440:12 524:7 556:8 641:3
---	--	--	--	--

Henderson Legal Services, Inc.

202-220-4158

www.hendersonlegalservices.com

HIGHLY CONFIDENTIAL

Rust, Marcus - Vol. II

March 6, 2014

45

talked 400:1,4 495:12,13 496:5,8,15,18 660:14,15 661:4 741:6	temperature 428:17 430:21 431:10 temperatures 526:4	701:21 702:2,3 721:9,17 735:19 744:4,6 744:9	482:12 483:12 489:18,18 490:8 492:17 493:13 497:17 498:5 500:5 501:22 502:1,2 504:16 507:20 507:21 517:17 517:19 530:18 533:14 537:6 547:5 549:2 556:1 557:18 566:1 571:17 573:4,10 577:15 584:18 584:22 586:9 589:2 596:3 603:15 616:1 619:8,9 621:18 627:4 631:18 639:4 640:16 640:18 642:3 642:11,13 643:13 644:5 644:19 645:2,3 651:9 655:21 660:12 661:1 662:12 671:9,9 671:11,13,14 671:14 681:15 692:3 731:21 734:10 735:5 741:18	460:11 505:8 545:1 thoughts 464:14 611:14 threat 727:17 three 392:7 443:7 461:2 473:8 511:4 520:8 540:2 568:11 569:14 582:13 588:9 638:10 677:18 739:2 Thursday 372:16 684:4 time 378:5 380:13 381:8 381:15,22 383:19 385:14 387:17 389:17 391:8 399:11 399:17 400:12 402:14 407:13 408:3,20 410:21 426:9 470:5 472:15 485:9 487:16 491:16 503:6 505:20 516:15 516:18,20 532:10 546:22 560:8 574:4 587:18,21,22 588:14 596:17 600:3 601:6 609:18 620:5 623:10 627:1 633:7,14 635:6 647:2 655:13 669:3 691:20 705:12 723:3 723:22 728:22
talking 379:13 440:19 458:16 460:19 462:12 483:19 488:7 508:8,12 523:10 564:18 606:20 700:2 727:16	ten 429:9 541:16 541:19,20 term 506:13 563:9 570:3 721:5 terminate 473:3 terminated 413:7,10,12 467:12 472:22	thank 514:8 524:6 526:11 558:21 674:15 683:18 685:20 697:20 739:14 740:14 Thanks 415:3 568:15 611:20 742:2 theory 547:11 547:20 548:2,4 thing 382:7 383:10 385:2 390:8 400:10 411:18,19 413:2 420:16 424:13 426:4 451:5 530:19 552:5 567:1 595:1 596:5 606:2 619:10 675:7,16 676:2 685:9 things 383:3,6 384:9 386:5 427:4 478:5 481:21 482:21 484:5 557:13 589:21 715:10 721:21 740:18 think 380:12 381:19 407:6 414:22 420:10 420:17 421:19 427:5 445:5 454:5 476:17 479:10 480:8	thoughts 464:14 611:14 threat 727:17 three 392:7 443:7 461:2 473:8 511:4 520:8 540:2 568:11 569:14 582:13 588:9 638:10 677:18 739:2 Thursday 372:16 684:4 time 378:5 380:13 381:8 381:15,22 383:19 385:14 387:17 389:17 391:8 399:11 399:17 400:12 402:14 407:13 408:3,20 410:21 426:9 470:5 472:15 485:9 487:16 491:16 503:6 505:20 516:15 516:18,20 532:10 546:22 560:8 574:4 587:18,21,22 588:14 596:17 600:3 601:6 609:18 620:5 623:10 627:1 633:7,14 635:6 647:2 655:13 669:3 691:20 705:12 723:3 723:22 728:22	talks 460:18 679:3 tally 536:9,14,18 tape 449:1 521:17 522:4 522:12 523:2 523:11 582:17 667:12 target 422:16 542:2 targeting 418:19 610:10,13,14 622:15,19 targets 579:10 team 429:8 611:11 Technical 631:15 tell 412:18 421:10 517:5 517:15 518:18 621:2 638:6 652:7 668:15 674:7 678:10 681:4 696:19 703:14 705:13 736:18 737:22 telling 389:12 695:8 735:3

Henderson Legal Services, Inc.

202-220-4158

www.hendersonlegalservices.com

HIGHLY CONFIDENTIAL

Rust, Marcus - Vol. II

March 6, 2014

46

733:9 738:17 742:3 timed 530:4 timeframe 655:12 times 382:13 405:19 406:1 474:9,11 485:6 499:20 526:3 552:8 738:22 timing 388:10 441:6 tired 544:21 668:2,2,4 title 392:12,18 532:14 today 389:15 390:2,20 391:5 397:20 427:13 480:4 494:13 516:16 530:7 533:3 559:19 572:6,10 630:21 635:7 640:3 641:21 644:16 647:14 647:15,20 652:3 653:10 653:17,18 665:11 688:19 Today's 378:4 told 412:22 580:16 591:22 592:3,15 593:18 630:22 631:2 644:20 650:19 680:17 680:18 699:5 708:7 tolerance 411:21 425:5 460:12,16	Tony 525:4 tool 400:14 top 406:18 467:4 525:18 540:22 541:14 541:15,19,20 546:3 561:11 595:11 598:12 598:14 608:21 656:14,16 680:9 683:14 691:6,8 706:13 706:18 topic 392:10 435:4 447:17 636:11,13 639:19 641:4 643:8 644:9 645:1,11,11,15 657:9,12 660:3 660:13 661:7 663:3,5 665:6 665:19 666:5 topics 484:17 696:6,7 tornado 654:12 total 474:6 521:20 656:17 657:10,20 658:1,13 totally 484:13 totals 658:8 tough 717:1 tower 724:2 track 585:12 trade 390:13 665:17 trading 583:20 584:13 training 631:20 transcript 743:4 transcription	743:10,15 transformers 673:5 723:20 treat 502:7 574:12 576:22 604:8 606:4 treated 589:21 treating 576:17 605:13 treatment 730:21 tremendous 393:10 395:14 trend 403:15 trick 626:11 tried 499:20 517:14 552:8 681:17,21 trough 411:14 418:10 troughs 408:17 truck 673:1 674:12 721:13 722:2 723:1,12 trucks 421:1 728:7 true 420:2 743:9 743:14 744:9 truly 382:19 579:6 trust 435:10 578:5 truth 694:4 try 398:17 454:5 479:22 499:18 512:10 527:7 529:7 616:2 668:1,4,7 702:3 trying 388:10 407:4 442:13 516:20 538:1	601:9 602:17 610:13 612:16 620:10 660:12 678:9 728:3 Tuesday 574:21 679:4 turn 392:6,8,11 435:3 442:18 461:20 473:7 476:13 480:18 482:14 486:1 486:20 541:13 550:5 569:4 583:12 636:11 646:1 656:10 663:3 687:6 691:5 TWENTY-NI... 372:3 twice 732:9 twist 620:10 two 374:9 412:9 412:9 445:18 449:1 473:13 476:13,16,19 486:14 510:16 516:15 521:17 522:4,13,19 523:12 533:4 540:2 545:6 575:12 584:18 595:12 619:12 636:12,13 638:18 663:14 663:17 669:21 672:1 677:9,18 689:11 706:3 739:2 740:18 two-thirds 530:8 type 382:7 384:11 385:2	542:14 616:3 627:17 638:21 typed 701:13 types 533:4 638:15 642:14 typewriting 744:8 typically 409:1 typing 576:1 <hr/> U U.S 615:21 UE 377:9,10,13 377:16,20 552:20 553:6 558:2 583:1 598:6 629:7 690:19 UEP 379:13,14 379:19 380:4,5 382:10 383:21 385:18 386:9 386:18 387:12 387:17,18 388:14,15 389:1,18 390:7 390:16 391:7 391:17 395:4 399:20 400:5 400:20 401:2,8 405:6 416:6 417:4 420:4 425:9 432:10 433:8 434:14 435:9,13,15 446:15 450:14 451:1,9 456:20 467:13 478:13 489:8,13,17 490:2,5,16 493:9,12,15 495:14 496:9
--	--	---	--	---

Henderson Legal Services, Inc.

202-220-4158

www.hendersonlegalservices.com

HIGHLY CONFIDENTIAL

Rust, Marcus - Vol. II

March 6, 2014

47

496:19 497:9	674:22 675:6	underlying	455:22 477:21	use 440:20
498:2,7,8	675:16 676:2	394:7,17 395:4	498:7 501:7	475:19 490:1
499:11,22	677:2,11	400:9,13	548:17	506:13 512:19
500:19 501:3	679:10 680:13	401:12 402:1,9	unexpected	513:10,12
501:12 502:16	680:13,18	undermine	436:1	514:1 518:21
503:19 506:21	686:20 688:18	702:4	unfair 454:6	521:2 541:5,7
507:17 508:22	688:21 689:2,3	undermining	unfit 428:12	587:3 589:6
509:7 525:8,12	689:17 691:11	612:13	United 372:9	590:9,20
541:9,9 542:16	693:19 701:2	underneath	374:3 379:13	592:19 594:4,9
543:2 548:18	702:21 703:7	716:9 718:3	379:15 380:18	594:11 611:4
549:1 554:10	704:15 706:1,8	understand	381:3 391:16	615:19 616:1
556:15 560:16	708:14 714:2	379:9,14	394:13 396:9	616:14 625:4
561:12 567:1	714:18 715:16	397:15 398:5	402:18 403:1	630:13
568:4 571:3	716:1,9,17	421:8,11,16	434:19,22	USEM 405:18
574:5,7,15	718:20 719:4	480:5,6 482:6	441:7 442:4,14	405:22 546:9
575:1 576:6,7	724:8 725:6	488:11 489:20	443:8 542:22	546:14,20
583:10 584:5	730:16,19	493:2 503:3	571:4 583:2	547:1 661:8
587:4,9,19	734:13 736:16	508:1 544:17	595:21 603:22	662:17,19,22
588:14 590:17	736:18 738:2	545:2,3 556:4	621:7 625:22	666:1,11,15
590:21 592:13	741:19	562:21 564:15	626:14 629:18	741:19
592:19 593:18	UEP's 388:14	705:9,13	632:11 636:21	uses 496:10,20
594:5,20	435:14 487:19	understanding	637:2 661:20	579:9
595:18 601:7	487:20 509:18	380:17 381:7	697:18 708:13	usually 530:18
601:13 602:6	555:18 583:16	381:11 385:11	unpriced 503:22	708:7
603:2,6 604:11	584:8 593:1	385:13 386:9	Unsold 503:22	utilize 589:8
607:7,14	680:21 681:1,4	387:15 456:5	unusual 703:21	utilizing 591:8
609:16 611:1	Uh-huh 392:14	478:2 486:17	upcoming 616:7	
612:13,17	428:9 476:21	488:4 552:3	616:13	V
613:2 621:7,13	481:12 504:13	556:22 557:2	upset 590:7	V 372:8
622:8 623:10	600:10	563:10 564:10	596:17 602:16	vague 482:4
623:18 624:7	ultimately	586:13 588:6	607:13	721:8,17
625:14 627:1	433:10 446:14	618:16 625:19	urging 624:15	Vaguely 494:14
627:22 630:17	493:8 501:9	627:15 630:10	urine 431:6	560:6 585:5
631:4 632:11	uncertified	630:12 640:2	Urner 583:3,21	714:3
632:14 634:1	578:20 579:1	656:22 687:3	584:13	value 403:15,19
634:11,22	732:3,6 733:3	689:7 722:20	USDA 610:2,2	Vanessa 374:16
635:14,15	733:6	understands	611:3,3,4	449:14
660:15,20	underlined	403:5	614:11 616:8	variance 585:9
661:3 666:1,11	428:7 430:16	understood	616:13,21	variation 707:5
666:15 668:8	673:10	386:14 387:10	618:16,17,19	variations
668:13,16	underlining	387:13 397:16	620:7 622:11	706:13
669:5,14	427:17	416:5 417:3	656:18	various 466:14

Henderson Legal Services, Inc.

202-220-4158

www.hendersonlegalservices.com

HIGHLY CONFIDENTIAL

Rust, Marcus - Vol. II

March 6, 2014

48

513:19 625:21 628:16 638:9 660:21 verbal 389:12 verbatim 569:12 572:15 verification 385:4 622:11 verified 389:16 611:5 616:22 622:12 verify 384:19 385:18 386:2 484:1 Vernon 646:6 646:12 725:20 version 519:13 519:13 versus 532:15 689:2 viable 527:7 529:8 vice-president 629:18 video 483:5,19 484:1,5,6,10 484:17,22 485:19 511:12 511:16 512:11 512:15,19 513:12,20 514:10,13,20 515:4,19,21 517:16 519:21 521:14,15 522:21 videographer 378:2 448:19 448:22 493:21 494:2 510:15 511:3 524:13 524:17 559:8	559:11 582:12 582:16 635:22 636:3 667:7,11 668:3 742:4 videos 513:13 513:18 videotape 378:3 481:22 482:21 510:16 511:4 516:3,4,10,22 522:19 523:19 582:13 667:8 videotaped 378:4 742:5 view 551:12 views 542:9 violated 426:21 455:6 violating 447:18 455:5 violation 417:11 420:3,7 424:2 425:14 477:15 477:18 730:17 violations 575:4 579:7 violence 673:4 674:21 721:5 visit 410:4 536:6 vocal 463:19 Voices 391:16 394:13 396:9 402:18 403:1 434:19,22 441:7 442:4,14 443:8 volume 372:12 378:3 512:8 voluntarily 579:6 voluntary 711:22 712:3	volunteer 401:1 volunteered 472:3 vote 457:3 525:8 709:22 713:8 739:12 voted 451:6 457:5,6,8 490:12 491:1,6 606:1 692:15 voting 450:18 450:20 451:5 VP 635:14 <hr/> W <hr/> wait 398:17 580:8 592:12 606:13 683:8 687:13 697:21 waived 681:16 742:7 Wal-Mart 444:2 621:8,16 623:16 624:5 624:15 625:21 walk 442:13 536:7 walked 410:2 660:6,19,21 663:14 666:8 walking 482:15 walls 547:10,20 want 389:6 401:19 402:12 414:19 419:18 420:21 423:9 431:19 437:12 437:15 463:3 472:17 485:11 490:16,18 497:10 508:14 511:16 513:7	515:7 517:20 519:13 520:21 529:14,19 544:11 550:15 572:9 588:7 589:5 604:21 604:22 605:20 607:18,20 608:2,15 609:3 628:13 650:21 674:14 679:7 685:22 695:11 695:15 706:21 707:9 709:8,19 721:10 729:9 737:14 740:6 741:12 wanted 394:21 396:15 401:2 444:3 455:18 463:22 493:14 502:4,5,7 576:16 588:8 588:10,13,15 589:8,21 604:3 604:4,17,18 606:6 607:5 659:4 699:20 wanting 413:14 wants 397:11 532:6 701:22 warfare 673:10 674:11,16 warning 377:7 533:2,5,8,12 533:17 534:13 534:16 535:5 535:15 538:12 538:21,22 540:8,22 541:16 543:12 544:4,13	Washington 372:13,19 373:17 611:11 wasn't 412:2 469:17 484:8 514:22 549:18 563:2 584:2 608:7 645:9 721:17 735:1 735:10 waste 633:6,14 watching 515:10 water 479:13 515:12,22 673:5 724:2 726:1 way 403:1 409:14 416:16 420:5,6 448:8 465:7 468:10 490:8 497:22 532:21 551:5 590:4,4 597:7 604:5,6,6 605:5,6 611:22 674:13 679:14 705:17 707:22 WAYNDOTTE 372:1 ways 489:1 602:13 604:4 we'll 380:2 423:7 553:4 555:6 668:4 676:10 682:2 698:2 712:21 713:21 729:9 741:20 we're 396:9 458:15 459:10 482:13 524:11
---	---	---	---	---

Henderson Legal Services, Inc.

202-220-4158

www.hendersonlegalservices.com

HIGHLY CONFIDENTIAL

Rust, Marcus - Vol. II

March 6, 2014

49

532:11 553:19	422:13,19	Whaley 621:11	412:8,21	514:9,20
554:8 557:18	424:4 425:8	622:6	413:21 415:18	515:11 516:13
562:4 593:4	426:21 445:1	white 408:13	416:2 418:6	517:2 519:4
608:14 609:2	459:3 460:20	409:1 504:19	419:14 421:7	520:10 522:7
655:21 674:11	486:5	535:15 537:2	421:15 423:2	522:15 524:2,9
676:16,21	weights 458:14	540:15 648:2	424:6 426:3,14	524:15 529:7
689:9 708:7	welfare 380:10	684:16,17,18	427:21 429:6	532:5,7 535:7
741:1,13	394:2,5,17,22	whites 504:10	430:4 432:16	545:4,9,21
we've 392:1	399:21 425:6	504:15,16	432:21 437:4	549:8 550:9
440:18 449:8	425:10 428:11	Whitney 374:7	437:11 438:2	551:17 553:17
456:7,17 462:6	429:15 432:9	740:21	438:14 440:1	563:18 567:6
495:11 507:19	436:11 438:19	whittle 666:22	440:15 441:2	587:15 588:6
511:11,15	439:13 442:9	Wholesale 372:5	443:22 444:12	589:2,17
520:8 585:1	443:10 444:16	706:15 707:7	445:5,14	590:12 591:12
606:20 612:14	446:8 459:13	707:11	446:11,18	591:19 592:9
633:14 636:19	460:12,19	willing 576:13	447:4,9,16	593:8 594:2,14
642:17 656:7	478:3 487:19	Wilson 570:22	449:6,13	595:3 597:11
658:11 660:10	488:15 492:15	572:11 581:19	451:19 452:8	607:1 608:18
674:12 676:18	502:8,9 574:20	581:21,22	452:15 453:22	609:5 610:12
692:6 693:5	589:7 590:1,2	582:3,6 664:3	454:4,7 456:10	611:7 618:6
728:18 739:1	590:9 591:7	664:9	457:1,15,19	619:4 620:16
740:16	592:5 601:11	winter 526:2	458:6 459:6	622:18 624:19
weather 434:9	601:16 603:17	Winterset	460:18 461:10	625:10,18
website 537:3	603:21 604:2,7	521:20 522:4	461:17 462:21	626:17 627:4
538:17 722:16	604:11 605:8	648:16,16,18	464:6,13	633:9,17,20
week 591:2	606:6 608:16	wintertime	465:22 468:8	634:19 635:2
593:11 658:3,4	609:3,19 610:4	433:20	470:13 472:14	635:19 640:16
weekly 657:19	610:5,18,20	wisest 596:5	472:22 474:3	644:1,4 647:3
658:15,16	629:22 630:8	wished 502:2	476:4 482:12	652:9 666:20
659:2,9,11	630:11 674:14	wishing 632:17	483:4,12,20,22	668:21 669:9
weeks 413:14	675:1 679:3	wit 397:15	485:2,5,8,19	669:10 670:10
545:6 711:19	went 409:1,22	withholding	487:1 495:18	672:18 679:19
712:12	410:7 420:15	458:17	496:3,13 497:1	683:5,7 693:7
weigh 418:7,8	441:16 505:9	witness 379:2	497:17 498:11	694:5 695:2,16
weighed 422:14	539:10,11	384:5,8 386:4	498:17,20	695:16,18,21
weights 418:17	572:14 601:22	387:2 388:5	500:4,11	698:17 700:17
418:19	699:3 722:15	392:14 395:9	501:14,22	701:20 702:13
weight 414:21	weren't 382:22	395:20 396:3	502:22 505:6	703:9,11 704:5
415:15 416:9	408:14,20	397:11,13,19	505:19 507:3	704:17 705:2
417:7,17	468:21 499:21	398:11,18	509:10 510:2	705:14 706:6
418:11,13,16	658:12 735:8	401:16 402:5	512:12,14	708:20 710:6
419:20 422:10	Wesner 525:5	404:3,10 406:4	513:11,12	710:22 711:9

Henderson Legal Services, Inc.

202-220-4158

www.hendersonlegalservices.com

HIGHLY CONFIDENTIAL

Rust, Marcus - Vol. II

March 6, 2014

50

711:16 716:13	426:22 470:20	499:9 512:2	718:6,16	471:12,13,16
717:11 718:15	480:11 552:9	528:20 541:11	719:10 721:2,7	477:12 479:2
719:1,19 720:7	634:21 708:16	547:22 548:3	722:4,10	481:17 486:6
720:16 721:2	Wright 372:18	550:21 553:14	724:20 725:1	zeros 471:22
721:20 724:12	373:14 378:16	556:1 557:14	726:1 729:11	Zimmer 605:22
726:8 728:1,11	378:19	557:18 562:17	730:12 734:17	
728:17 730:19	write 413:17	565:4 566:9	739:10 740:5	0
731:8 733:12	482:17 490:19	567:12 571:16	year 441:19	0000069 552:20
734:1,17	536:10 703:13	574:3 581:4	442:10 444:3	0000069-70
735:15 737:1	704:7 705:20	585:20 586:15	504:15,15,19	377:9
737:11 738:6	writing 399:13	587:6 590:13	523:15 528:21	0000071 558:2
744:4,6,10	609:1 719:2	595:19,22	577:6 650:22	0000071-72
witness's 475:12	written 538:20	596:15 597:3	657:9 722:7	377:10
485:12 517:14	626:19 672:1	598:1,14,18	724:7	0001079 689:14
643:14 702:2	679:13 722:14	601:9,18 602:3	year's 385:14	0001474 526:13
witnesses	727:5	608:10 609:17	yearly 658:8	000174-75 377:4
517:13	wrong 426:6	609:21 610:8	years 382:5	000284 626:8
wonderful	505:13 618:4	612:18 613:15	383:16 404:19	000284-85
692:22	651:8 687:14	614:1,5,9	405:17 451:1,9	377:19
word 430:15	687:14,17	616:11 619:22	458:12 501:9	0007213 377:5
569:12,12	wrongdoing	621:9 623:11	520:8 547:2	529:13
593:16	616:3	624:13 626:10	635:11 655:10	0009116 531:10
wording 701:10	wrote 397:11	626:21 627:5	655:10 660:19	0009116-919
words 469:8	411:22 454:3	627:10,21	722:19 723:5	377:6
509:10 628:18	505:13,13	628:4,9,21	724:9,13 725:7	0017617 376:14
640:14 672:1	507:22 509:15	630:3 631:7,17	725:10 726:5	438:9
689:3 701:11	509:16 530:1	632:8,20 634:3	Yep 714:11	0019049 376:15
work 405:9	534:12 536:15	637:4 648:20	738:15	449:10
478:4 596:3	537:9 618:4	651:15,19	yesterday	0034691 376:20
597:17 600:2		654:9 656:4,12	379:12 484:18	503:8 682:12
603:15	X	673:18 683:12	575:5 652:4	0034892 376:18
worked 407:16	X 376:1,8	684:18 687:16	660:7	0035814 494:6
407:17 521:19	Y	691:9 692:21	yesterday's	0035814-16
521:20 522:3		697:3,7,10,13	511:13	376:19
628:1	yakking 597:20	698:17,21	York 689:1	0035857 586:20
works 740:11	yeah 407:20	699:4,7,13,17		0038374 595:10
world 480:11,12	430:17 433:4	700:12 703:1,2	Z	0038374-77
worried 460:7	448:18 450:5	709:18 710:6	zero 411:21	377:15
worst 535:19,21	451:12,12	710:15 711:3	425:5 460:12	0039139 376:21
536:21 537:1,4	460:10 461:4	711:22 713:15	460:16 466:10	506:3
538:3,10	462:20,22	714:7,17	468:5,19 469:4	0039242 377:8
wouldn't 409:2	466:17 474:13	715:14,18,20	469:12,13,15	545:16
	482:8 494:14			

Henderson Legal Services, Inc.

202-220-4158

www.hendersonlegalservices.com

HIGHLY CONFIDENTIAL

Rust, Marcus - Vol. II

March 6, 2014

51

004766 620:21 620:22 004766-70 377:18 0067466 457:22 0067466-67 376:16 0067468 669:22 0067469 669:22 0067638 399:3 0067638-639 376:10 0068166 427:10 0068166-167 376:13 0071690 465:19 0071690-74 376:17 0080669 377:12 573:21 0080674 678:21 0082871 376:12 414:12 0084872 376:11 406:10 0085507 686:5 0085508 688:12 0085511 687:11 01200644 570:10 01200644-46L 377:11 02 401:21 406:21 020105 583:1 020105-07 377:13 0295185 377:20 629:7 06 492:12 583:12 07 583:1	0707359 598:6 0707359-365 377:16 07932299 690:19 08 486:1 664:13 <hr/> 1 1 462:17 477:5 648:19 651:14 653:8,9 654:3 654:11 689:18 690:5 1.2 656:5 1.3 655:21 656:5 1.5 540:13 646:16 647:21 648:6 649:4,10 1.7 650:5 1/1/2006 450:10 453:1 1:23 511:2,5 1:39 524:14 1:42 524:18 10 666:22 724:13 725:10 728:18 740:16 10:31 448:20 10:50 449:2 100 385:6 408:14 471:18 487:21 488:1,2 488:5,7,12,21 489:3,5,15,21 491:1,6 493:1 493:11,16 494:18 495:8 495:12 496:6 496:16 499:1 500:15 501:10 502:6 574:16 576:14,20	577:3,5 580:5 580:10 584:3 586:2 588:19 596:19,20 602:11 605:9 605:15 606:5 606:19 607:14 608:7 610:6,20 616:15 623:22 624:11 730:15 731:3,13 10CV2171 372:8 10th 574:21 679:4 11 481:11 553:22 656:14 656:16 11:45 493:22 11:53 494:3 110 402:17 471:18 1100 374:18 111 461:20 462:2,3,7 689:13,21 690:10,14,17 691:5,6 692:6 692:9 709:16 1110 373:16 117 690:15,18 690:20 692:3,9 692:16 709:17 709:18 710:13 711:5 738:12 12 434:20 442:16 635:11 12/10/03 548:7 12:17 510:17,18 120 408:4 13 393:5 395:16 396:10 397:1	521:21 549:14 134 559:5,15 568:21 684:20 685:2,13,14 688:1,5 713:13 713:14 714:10 714:11 14 549:14 670:3 744:18 1474 527:4 15 438:11,20 466:20 519:20 530:4 550:9 667:5 682:13 682:20 683:13 150 653:19 151 656:15 15th 611:13 684:5 719:8 16 473:14 494:7 561:13,17 562:8 599:5 645:11 167 427:10 16th 627:20 17 525:4 657:9 657:12 170 460:7,8 180 653:19 19 547:17 660:3 1900 372:18 373:15 19049 449:11 19103-2799 374:11 1970 688:21 1973 646:5 1978 647:7 1984 647:16 1985 648:1 1986 648:8 1987 648:15	1989 648:21 1990 645:12 1991 649:6 1992 569:2,6 663:11 686:12 688:5 1993 649:12 1994 650:9 1995 651:5 1998 651:16 1999 645:19 647:3 652:13 653:3 723:9 <hr/> 2 2 435:3 477:5 640:13 648:13 650:1 655:17 712:7 2.7 429:9 2:28 559:9 2:38 559:12 20 383:16 473:15 660:13 200 373:7 422:18 478:17 20006 373:17 2001 677:3,10 723:9 2002 379:18 380:4,18 381:1 383:19 387:16 388:12,13,22 389:8,16 390:7 390:22 391:8 391:18 394:14 400:17 401:7 410:14 583:7 585:22 631:3 653:11 670:3 722:21 723:2,6 723:8,8 726:6
---	---	---	--	---

Henderson Legal Services, Inc.

202-220-4158

www.hendersonlegalservices.com

HIGHLY CONFIDENTIAL

Rust, Marcus - Vol. II

March 6, 2014

52

2003 402:20 404:14 414:14 426:18 632:14 634:2 635:8 2004 434:20 438:11,20 441:7,13 442:4 442:11,16 443:4,5 558:3 558:11 561:13 561:17,17,22 562:8 565:3 568:8 569:9 653:20 654:6 663:10 715:19 2005 458:8 462:8,17 466:3 470:2 472:10 480:22 654:13 689:18 690:5 2006 451:1 457:4 472:12 546:17,20 547:17 560:4 574:1 576:9 599:5 661:10 661:13 678:5 679:2 682:13 682:20 683:13 685:4 719:8 2007 525:4,16 613:20 614:3 616:17 618:9 620:8 2008 393:19 394:3 622:2 655:12,13 665:4 2010 521:19,21 655:13 2011 527:20 528:5,16	2012 530:4 531:3 2013 519:20 523:16 699:15 700:15 702:16 707:19 708:14 740:9 2014 372:14,16 378:5 2015 744:18 202 373:18 20th 439:1,14 442:10 443:4 21 527:20 213 585:22 215 374:12 21st 528:16 22 657:16 659:2 659:11 661:7 224 374:18 22nd 583:14,17 584:10 616:17 237 391:15 392:6 24 414:13 677:3 677:10 248 434:18 441:6,9,12 25 473:13,14 474:12 525:8 525:19 527:6 527:22 528:9 528:18 250,000 655:22 26 663:3 27 620:8 665:6 665:14 277 446:22 448:12 27th 401:7,21 285 626:8 2H 639:19	3 3 643:8 644:9 647:11 654:18 654:21,22 712:11 3.5 654:19 3:08 582:14 3:22 582:18 30 414:21 415:14 416:9 417:6,18 419:20 424:3 425:8 426:21 445:1 459:4,12 470:2 480:9 527:6 528:1,9 528:18 30(b)(6) 640:19 647:2,5 695:16 695:20 30,000 408:4 300 450:9 453:1 478:17 3000 374:9 305 609:8,10 613:13,17,18 615:3 30th 406:21 600:8 31 458:8 312 374:20 315 548:6 320 473:15 474:7 322 486:20 487:4,8 33 665:19 34892 492:7 360 599:14 365 598:6 379 376:2 399 376:10	3rd 613:20 616:10 4 4 402:20 404:13 473:15 558:3 667:8 686:12 688:4 711:19 4:21 530:4 4:31 636:1 4:51 636:4 40 480:10 549:13 613:12 406 376:11 414 376:12 427 376:13 43 473:14 438 376:14 44 545:17 449 376:15 45 549:13 588:11 607:6 45.7-square 473:21 457 376:16 46 570:10 460 373:7 465 376:17 48 588:11 483 537:8,9 483s 538:6,11 492 376:18 494 376:19 4th 404:14 569:6 5 5 505:9 655:10 655:10 667:12 679:1 711:21 712:12 5:27 667:8 5:47 667:13	50 385:4,8,12,13 385:14 468:19 469:4,7,11,16 469:21 470:14 470:19 471:4 479:1 548:9 549:3 503 376:20 505 376:21 562:4,7 568:11 568:14,21 714:9 507 569:4 51.2 474:18 511 569:13,15 514 376:22 517 377:1 636:7 518 392:19 645:22 519 377:2 523 656:10 524 377:3 526 377:4 529 377:5 531 377:6 532 678:3 535 676:6,21 677:4,5 536 669:18,20 669:21 670:9 676:8 538 376:10 399:2,4 539 376:11 406:6,10,12 540 376:12 414:6,10 541 376:13 427:6,10 542 376:14 438:5,6 442:8 442:18,19
--	--	--	---	---

Henderson Legal Services, Inc.

202-220-4158

www.hendersonlegalservices.com

HIGHLY CONFIDENTIAL

Rust, Marcus - Vol. II

March 6, 2014

53

443:1 445:4	558 377:8	573 377:12	734 376:5
543 376:15	545:12,16	582 377:13	739 376:6
377:7 449:9,16	559 377:9	586 377:14	74 465:19 578:7
449:20 452:18	552:16,20	595 377:15	741 377:22
544 376:16	555:10	598 377:16	75 526:13
457:20,22	56 393:9 395:14	5th 569:1 678:5	77 595:10
458:2	560 377:10		778-3000 373:18
545 376:17	557:20 558:2	6	78 646:19
377:8 465:15	561 377:11	6 372:14,16	7th 614:3
465:18	570:6,10	378:5 645:1	
546 376:18	562 377:12	655:10 712:12	8
492:3,7	573:17,20	60 607:6	8 654:4
547 376:19	575:11 581:7	60.2 475:20	80 607:8 628:12
494:6,8 549:21	678:7 679:1	60604 374:19	80438 613:12
549:22	729:16 730:1,3	613 377:17	80438-40 377:17
548 376:20	563 377:13	62 678:7	815 550:5,11
503:8,9 682:11	582:19 583:1	620 377:18	816 373:9
682:11,16,19	564 377:14	626 377:19	817 392:12
683:1,2,16	586:16,20,22	629 377:20	818 392:7
719:7	565 377:15	639 399:3	85 542:9
549 376:21	595:6,10,12	64112 373:8	85505 561:9
505:21 506:3,4	566 377:16	65 542:21	8th 685:4
683:15	598:2,6,12	660-7600 374:20	
550 376:22	607:11	667 376:3	9
514:5 515:8,17	567 377:17	67 458:1	9:08 372:17
517:10	613:8,12 614:2	670 575:11	378:6
551 377:1	618:1,13	674 730:7,8	90 530:8 708:17
517:21 518:3	568 377:18	732:20 733:14	900,000 654:4
5511 687:11	620:17,21	675 573:21	919 531:10
552 377:2,9	621:1	693 377:21	95 498:22 576:9
519:7,11,15,16	569 377:19	698 376:4	577:5
519:18 678:6	617:13,18		97 476:13,16,19
553 377:3	618:3 626:3,7	7	476:20
524:21,22	626:9,12	7 618:9 650:4	98 653:5
554 377:4	570 377:11,20	7:00 742:6,8	981-4000 374:12
526:13,14	629:3,7	70 552:20	99 653:5
555 377:5 529:9	571 377:21	620:21,22	
529:13	693:3,6 696:18	700 473:7,8,10	
556 377:6 531:6	734:10 739:22	707 480:17,18	
531:9	740:3	480:19	
557 377:7,10	572 377:22	70s 646:22	
543:7,10	741:21,22	714-7100 373:9	
		72 558:3	

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